
H. Inland. Comm. Honor.

MINUTES of EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

TIPPERARY ELECTION.

CASE I.

A

1777

MINUTES OF EVIDENCE

THE JURY



THE JURY

ON THE

TRIAL OF THE

CASE

THE
C A S E

OF THE
County of Tipperary.

THE committee for trying this cause was chosen on Saturday the 8th of November, 1777, and consisted of the following Gentlemen :

The Honourable Barry Barry, Chairman.

Sir Richard Johnston, Baronet.

Luke Gardiner, Esquire.

George Montgomery, Esquire.

Robert Howard, Esquire.

Right Honourable Thomas Conolly.

Robert Ross, Esquire.

George Ogle, Esquire.

Right Honourable Joshua Cooper.

Right Honourable Richard Jackson.

Rowland Bateman, Esquire.

Hugh Howard, Esquire.

Fitzherbert Richards, Esquire.

Nominee for the Petitioner, Daniel Toler, Esq;

} Henry Pomeroy, Esq;

Nominee for the sitting Member,

} Thomas Adderley, Esq;

Petitioners—Daniel Toler, Esq; and several of the Freeholders of the county of Tipperary. Counsel for the sitting Member—John Fitzgibbon, Esq; * Thomas Kelly, Esq; † Anthony Dwyer, Esq.

Counsel for Petitioners—Mr. Macartney, Robert Boyd, Esq; William T. Maunsell, Esq.

The Counsel being called in, and the petition of Daniel Toler, Esq; being read; and the petition of Mathew Jacob, John Bagwell, Wray Palliser, Godfrey Taylor, John Green, John Head, George Pepper, Thomas Pepper, Simon Pepper, Theobald Pepper, James Otway, Charles Minchin and John Minchin, on behalf of themselves and several other freeholders, being also read,

Mr. Fitzgibbon, Counsel for the sitting member, objected to going into the petition of the Freeholders, as Mr. Jacob had disavowed it to be his; and prayed that the same might be reported specially to the House.

Mr. Macartney, Counsel for the petition, insists that the Committee should go into it, whether disavowed or not, pursuant to the order of the House. The first petition was on the part only of Mr. Toler, for the improper conduct of the Deputy; the former petition was renewed, and

* Since his Majesty's attorney-general, and now lord high chancellor of Ireland and lord Fitzgibbon.

† Since his Majesty's prime serjeant at law, and now third justice of the Common Pleas.

the petition of the Freeholders was prepared in Dublin, in consequence of instructions from the country. All those gentlemen named have actually signed it there. Mr. Jacob, by letter, avows it to be his cause, but the shortness of time obliged it to be preferred without his name being actually subscribed.

Mr. *Boyd*, Counsel for the petitioners, avowed his appearance for the Freeholders, having received instructions from Mr. Aickin, the agent for all who signed the Freeholders petition, and who also avows it, he having written instructions.

Mr. *Fitzgibbon* applied to the Committee, that Mr. Aickin might be solemnly examined as to his instructions.

Mr. *Boyd* insisted that the petition was only the act of the subscribers; but if it were signed but only by one or more, it would be a sufficient authority for the Committee to enter into it, and objected to the reading any letter from Mr. Jacob, as being illegal evidence.

Mr. *Pomeroy*, the Nominee for the petitioners, moved that the Committee, Counsel, &c. might withdraw, in order to have the sense of the Committee taken, whether the Counsel should proceed or not.

Mr. *Adderly*, Nominee of the sitting member, contended that as the petition was not genuine, in consequence of the disavowal of Mr. Jacob,
the

the Counsel ought not to be permitted to proceed upon it.

Mr. *Fitzgibbon* argued, that as the first man mentioned in the petition disavowed the signing of it, that the agent should be examined on oath, who had really signed the same, and whether he was authorised to appear before the Committee as agent for the petitioners, and that then the Committee should consider, whether they were warranted to proceed thereon without reporting the same specially.

Mr. *Kelly*, Counsel for the sitting member, urged the Committee, that there was one unanswerable reason for the Committee to examine into this fact; for in case the same should happen to be reported frivolous, the Committee would, by not making this inquiry, lose the opportunity of punishing the subscribers, if they should then disavow; and the House of Commons would reject the petition of an individual Freeholder complaining of undue election. It was therefore incumbent on the Committee, first to inquire, whether this was the petition of those who signed it, in order to punish if it be not. The Courts of Law attach attorneys, when the parties disavow their being employed.

Mr. *Boyd* contended that the petition had been regularly presented to the House, and that the presumption is in favour of the petition.

Mr.

Mr. *Macartney* also urged, that the Committee ought of necessity to go into the examination, and cannot refuse to obey the order of the House for that purpose.

Mr. *Kelly* replied, that the power of the House was vested in the Committee, and therefore they had a right to go into this examination.

Mr. *Conolly* (a member of the Committee.) If the petition be not genuine, moved that Jacob's letter might be read.

Mr. *Gardiner* (another member of the Committee) demanded of the counsel for the petitioners, whether Mr. Aickin would swear that he was employed by any, and what person signing the petition.

Mr. *Aickin* answered without oath, that after the election was over, a meeting of the Freeholders was held, and Mr. Biggs, the present sheriff was chairman, who wrote a letter to Mr. Lane to act for them, and Mr. Lane having refused, Mr. Aickin, his partner, was appointed; and Mr. James Otway, one of the subscribers to the petition, informed him that he was satisfied with such appointment.

Mr. *Gardiner* then moved to examine Mr. Aickin upon oath.

The question being then put, and carried in the affirmative, Mr. Aickin was sworn, and then read the subscribers names. James Otway told him he was employed for the subscribers to the
petition;

petition; and Mr. Toler particularly applied to him for that purpose, and he looked upon himself as agent for all the subscribers. The petition was above half a year ago given to him, and he so long understood himself to be agent to the petitioners, and it was better than half a year ago since he was applied to by Otway, and he would charge every subscriber to the petition, and Mr. Biggs, with his cost.

The Committee Room was cleared, and on the Counsel, &c. being admitted, it was ordered that the petitioners should be at liberty to proceed upon the merits of the two petitions.

Counsel called in.

Mr. *Macartney*, of counsel for the petitioner, Daniel Toler, Esq; stated that on the 29th May, 1766, the election for the county of Tipperary began—Henry Prittie, Francis Mathew, and the petitioner, Daniel Toler, were candidates. On the second day of the election another candidate started. There were then only the three candidates. On the first day the petitioner attended to poll his friends, but it was not thought proper by the sheriff or his deputy to proceed with alacrity. The deputy to the high sheriff was Mr. Denis O'Brien, and in favour of Mr. Mathew, endeavoured to act at once as a judge and an agent; he was indeed a most active friend and zealous advocate, and most likely to serve his friend, Mr. Mathew. He took upon himself the office of deputy; expended his property for him, and during

during the whole election acted in the warmest manner for Mr. Mathew ; as *his* friends came he would poll them as fast as possible ; but when Mr. Toler's came the books were immediately shut. He was *agent, deputy, judge, and friend*, and gave directions to *postpone* or *hasten* the poll, as it was necessary for Mr. Mathew. There were sixty or seventy electors who had been rent chargers, but were admitted as having since been made lessees, and Mr. Mathew's estate, whereon they were settled, was set to them to make them freeholders. Sixty of those were allowed by Mr. O'Brien, though no such persons were known on the lands in which their freehold is pretended to be, and though they could give no account of themselves or their freehold. Mr. Mathew had early formed a resolution to sit for this county : it was no doubt a vast object, and of great moment to be returned, but the means taken by him were not justifiable. Five or six years before the late vacancy, he had determined to obtain this seat, and for that purpose had entered into connections with gentlemen of the country of equal rank, and with a man of as great fortune as himself ; and a bond was executed from the one to the other, under the confidence that the second voices should be disposed of to the best advantage for Mr. Mathew. At their canvas, Mr. Prittie's friends and Mr. Toler's were looked upon as united ; this union was discovered by Mr. O'Brien, who communicated it to Mr. Mathew, and Mr. Toler's friends were

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importuned

importuned, and the wish of a large tenantry of his were converted to his enemies, sixty-five in number voted for Mr. Mathew. Mr. Prittie's friends, from his obligation, were under the necessity of going contrary to his inclinations. —

The question therefore, will be, whether under these circumstances a principal person, Mr. Mathew's friend, giving money and a bond for 1000*l.* to gain friends at the election for Mr. Mathew, will not be deemed bribery. True it is, Mr. Prittie disavowed it on being applied to, but it was publickly disclosed in the court house ; but the bond is in writing, and the private condition under private trust, will appear from admission of the parties themselves. He then offered as authorities in point, the case of King against Vaughan, at the prosecution of the Duke of Grafton, wherein it is said, that wherever it is a crime to take, it is a crime to give ; they are reciprocal, and in many cases, especially in bribery at elections. Also of *Rex v. Plumpton*, offering a bribe to a corporator to give his vote for a mayor of a corporation, is such an offence as is punishable by information.

4 Bur.
2494.

2 Lord
Raymond
1377.

3 Bur.
1235.

Mr. *Boyd*, in addition cited, some cases intended to be relied on by the petitioner, *Sulstone v. Norton*, and *Bush v. Rawlins** there quoted ; that the offence was the same, whether the party afterwards completes his part of the corrupt

* Reported in *Sayer* 289, by the name of *Bush, v. Rawlins*. To parliament the attempt is a crime : It is complete on his side who offers it.

rupt act or not, and it is so laid down in *Hawk.* 1 Hawk. o. ed. 168. n. ed. 311. that the taking or giving of a reward for offices of a public nature is bribery. The common law opinion of bribery is to be considered as the opinion of the legislature.

Mr. *O'Brien's* acting as deputy on the poll, will, it is presumed, be admitted by the counsel on the other side, (it was accordingly admitted) and tho' the act of parliament required the poll-books to be returned to the clerk of the peace in a limited time; it had not been done in this case.

Robert Ledger was then produced by counsel A witness. for the petitioner.

Mr. *Boyd* examined Robert Ledger—He knew Denis O'Brien—he attended the whole of the election but twenty-four hours, when he went to the country—he knew Mr. Mathew—took it that Mr. O'Brien was more partial to Mr. Mathew, for whom the witness was concerned—He was concerned in conducting the freeholders from one room to another. He received no farther instructions from O'Brien, than to be careful in his business, and mind what he was about.—He told Mr. O'Brien that Mr. Mathew had no more men to poll, when he wanted to get the court adjourned; and then both he and the sheriff would adjourn the court for an hour or two, and sometimes until the next day. He could not say, whether Mr. Toler was acquainted with this or not; but he believes at such times, Mr. Toler had voters to poll. The reason of his giving such information to Mr. O'Brien, was because

he could make free with him.—Observed Mr. O'Brien to be active for Mr. Mathew, and knew him to be concerned for Mr. Mathew.—He did not receive any money from Mr. O'Brien for any purpose, during the election ; but received some money by the directions of O'Brien, as he believes, and in O'Brien's presence, from Mr. Hogan, who was an agent on the election for Mr. Mathew, to bear the expences of the witness, and some poor freeholders from the country, who were to poll for Mr. Mathew ; and he is certain, that Mr. O'Brien knew the purpose for which such money was given.

Mr. *Kelly* objected to the examining the witness respecting corruption, by his own receiving money.

Mr. *Boyd, in Reply*.—The charge of general corruption was sufficient to put the party charged with it to a particular defence to it. Every species of entertainment is considered as an offence under the bribery laws.

The witness was a freeholder of the county of Tipperary—he received money one time only—the sum he received was three guineas, and it was applied pursuant to the directions he received ; it bore his and two other men's expences about one hundred and forty miles—he had three guineas more—two from Mr. Mathew, and one from Timothy O'Brien, an attorney, which guinea was since demanded, and given by Mr. O'Brien to Mr. Tim. O'Brien. Tim. O'Brien acted as agent for Mr. Mathew ; he received no
more

more money, and knew of none given to others ; it was received at different times one morning— He was employed by Mr. Mathew himself, and often received instructions of going from court to court. He always saw Mr. O'Brien take part with Mr. Mathew, and saw Mr. O'Brien sometimes in Mr. Mathew's company, and sometimes not, and has often heard Mr. O'Brien asking for votes.

Upon his examination by Mr. *Kelly*, of counsel for the sitting member,

The witness was present when the deputy was appointed, and *all* the candidates were also present—Can't say whether Mr. Toler thought the witness was under any engagement ; and believes he might think to be in his interest. Mr. O'Brien was appointed and sworn deputy in open court, and the witness was present when Mr. O'Brien declared he would no longer act as deputy, and desired the sheriff and candidates to appoint another deputy in his room—He could form no belief whether Mr. O'Brien would not have continued to act if he had his choice—He never had heard any one say, that the deputy had acted *monstrously well*. The witness had told several people, that he was offered large sums of money, (800*l.*) to give evidence against Mr. Mathew, but he was not to get any price ; and his motive was in order to humbug Mr. Mathew's friends, that they might think so ; but they had found to the contrary. The witness was one of Mr. Mathew's confidential friends on that election, and
came

came to give evidence against his will—He could not say whether the deputy rejected any of Mr. Mathew's friends, but believed he did, and did not doubt but he refused some without any objection.

The deputy was a man of good property, and the best agent they had—He believed the deputy was sworn to act impartially, but had heard complaints of the deputy, but never had heard that he had *acted monstrous fair*.—The witness did not continue in Mr. Mathew's employment after the election, and never mentioned what evidence he intended to give; nor was he ever offered any money to give evidence, nor did he ever swear that he was offered any money.

Mr. *Ledwell* had been very active for Mr. Mathew—the witness had been told that he could get twice as much to give evidence on the other side, but believed it to be a joke, and believed people might think him serious when he said so—he had never been arrested by the petitioner, and had voted against his landlord. Mr. O'Brien seemed to lean to Mr. Mathew's side.

The court seldom adjourned at one hour, and had been adjourned at one o'clock, and the witness heard that Mr. Toler disapproved of such frequent adjournments, and of his voters being so long delayed in town—he believed from nine to three was the time agreed upon for the poll—heard nothing of Mr. Toler's objection—had then a great friendship for Mr. Mathew, and would not appear to give evidence before the committee

committee, if he could help it; he did not intend to be believed when he said he was to have 800l. and though some believed it, yet others did not—he mentioned it to every one: but when he came to the test before the committee, he would not tell a lie for both their estates—he polled for Mr. Mathew at the former election, and was paid afterwards for his trouble. The people whom he brought, one was tenant to Mr. Gray, and others to different landlords. The money was given to him publicly, and not as a bribe or privately; he went the journey of one hundred and forty miles pending the election—had three fresh horses, and returned the night after he set out—three gentlemen came with him, but they had no relays of horses—one only travelled forty-five miles—the witness got a fresh horse at the Rag as he went—Messrs. Power and Kennedy came in with him—there were no more came in with him—he had six guineas given to him for this particular journey—he rode sometimes ten miles—sometimes six in an hour—he was served last Tuesday with the summons, but heard he was to be summoned about a fortnight or three weeks ago. The conversations respecting offers of money were just after the election, and for the last six months past the witness told Mr. Mathew, that he was offered 500 guineas and a commission, for giving his evidence before the committee; but he was not serious, and did not believe that any questions put by the committee would be against Mr. Mathew's

Mathew's interest; he intended Mr. Mathew should believe that he had had those offers; but his intent was that he should serve Mr. Mathew's interest.

Martis 11^o Die Novembris, 1777.

Committee called over.

Counsel for the Petitioners.

Mr. *Boyd* for the Petitioner.

Another
Witness
was pro-
duced.

ROBERT EVANS.—As to the conduct of the deputy, he attended at the last election for the county of Tipperary, knew Mr. O'Brien who acted as deputy there. It was mentioned on the first day, that the sheriff should begin to poll at nine, and continue till four daily, but this regulation was not adhered to—There were several adjournments earlier—There were two courts, an upper and a lower one. The sheriff presided in the lower court, and the deputy in the upper. The irregular adjournments were in the upper court—he knew the last witness Ledger so far, as having seen him act for Mr. Mathew—He saw him several times go up to the upper court and whisper the deputy—sometimes cross the table, and sometimes round the table, and then return to the lower court; and observed on Ledger's going away,

away, he soon returned, and the deputy would thereupon observe, that when he had polled an equal number for each candidate, he would adjourn the poll by the directions of the sheriff, as the deputy declared: On the first day's poll three polled, one for each candidate—Did not recollect when the court was opened or adjourned on the first day—the poll continued twelve days—the adjournments were irregular, as were the meetings. On one day the sheriff was not in town until one o'clock—Mr. Toler had a great number of voters to poll, who resided at a distance from Clonmell—could not say what were the causes of those irregular adjournments. Soon after the deputy and Mr. Ledger had whispered, the court was usually adjourned in about a quarter of an hour after the whisper. After the first day's poll, Sir Skeffington Smith became a candidate, by which means ten electors polled for Mr. Mathew, for five that polled for Mr. Toler. The agreement had been to poll by tallies of five each. After the second day, or the third day, Mr. Mathew had a majority by this means over Mr. Toler. During the proceedings on the poll Mr. Toler requested, that the poll should be continued longer than these early adjournments; particularly on the fourth day, when only four had polled, one for each candidate (being then four) in the deputy's court. The witnesses knew the electors for Mr. Toler appeared in great numbers in the deputy's court, and were very uneasy at being kept so long; and

on his applying to the deputy and expressing their uneasiness, the deputy answered the witness, "Don't you imagine Mr. Mathew has electors to poll as well as he?" Counsellor Holmes in behalf of Mr. Prittie requested, for God's sake, the poll might be continued; but the deputy answered, he could not proceed after he had got directions from the sheriff not to proceed—he saw no person on behalf of Mr. Mathew desire the poll to be continued—he knew Mr. Toler sustained an inconvenience by these delays: one gentleman, Mr. Clement Sadler, came to town two different days to be polled for Mr. Toler. On the last day but one, the witness shewed the deputy a list of one hundred voters for Mr. Toler, who said, "That then they might return, as they could not go through that number." The next day the poll was closed, and at the witness's instance, Mr. Sadler returned and was not polled; the witness's reason was, that the distant pollers might be polled, who were uneasy at being absent from their families. Sir William Osborne did not poll on account of the close of the poll, and expressed his dissatisfaction at being disappointed—the witness heard Sir William Osborne say he intended to poll for Mr. Toler. On the last day of polling, numbers of Mr. Toler's friends supposed they could not be polled that day, the poll was continued by candlelight on the last day until eight o'clock at night—He could not say whether any proclamation was made—the poll had ended in the deputy's

ty's court about three o'clock—the witness then went to the sheriff's court between four and five, and about five was polled—he was not by at the proclamation—on that day Mr. Toler had polled a great many more than any other candidate. The gross numbers in both courts polled on that day was more than usual on any other day.—He could not account why the deputy's court was closed before the sheriff's. On the 11th of June the poll closed—he could not say whether Mr. Toler desired to have the poll continued on the next day.—The witness knew Min. Carding a freeholder, who did not vote, though he attended for Mr. Toler—knew Mr. Thomas Pepper, a freeholder, who stood in the same predicament as Carding, who was in town the day before the close of the poll, and intended to be in town next day, but was prevented by the wetness of the day, and from thinking the poll would have continued longer; they returned for the purpose of voting, but the poll had been closed—He did not remember any other freeholder in like predicament—he had an opportunity of observing Mr. O'Brien during the poll, as he sat under him—could not say, whether Carding or Pepper applied to the deputy to poll—He had been in the country previous to the poll—lived in the town of Tipperary. The morning on which the poll began, he saw Mr. O'Brien in the street, among the electors, soliciting votes for Mr. Mathew—had seen Mr. O'Brien during course of the poll, in the absence of Mr. Mathew's agent,

call up freeholders by their names to vote for Mr. Mathew and polled them ; but he did not act so for the other candidates. The decisions of the deputy were not uniform respecting electors who had the same title ; as for instance, Mr. Evans, his uncle, and Mr. Bradshaw, were co-partners in a farm and pay 160l. per annum rent. Evans set his undivided moiety to H. White for 160l. Mr. Bradshaw sets his for the same. Mr. Evans attempted to poll as a freeholder at 80l. a year profit rent and was rejected ; because if the head landlord were to come for his rent, Mr. Evans would not have 10l. a year, as the whole lands were subject to that rent ; but the head landlord could not come on his in particular, not being divided. Mr. Bradshaw did not vote, being produced as a cross voter. John Gavan of Board was tenant to Mr. Smith, who was subject to a great rent for his farm—Mr. Gavan was asked if he had paid his immediate landlord his rent, and the head landlord came down upon him, whether he would then have a freehold, admitted he would not—he polled for Mr. Mathew.—Evans offered to take the freeholders oath, but was refused.

Charles Oldis, of Brookhill, tendered his vote for Toler and Prittie, and offered to swear that his two brothers were allowed in the lower court under the same will and title as he offered in the upper ; but he tendering his poll for Mr. Prittie and Mr. Toler was rejected, tho' his brothers polled for Mr. Mathew—Knows Thomas
Howly

Howly offered to poll for Mr. Mathew, and did poll for him and Mr. Prittie—he was objected to as disqualified by not having taken the converts oaths—Counsel insisted that he was not a Protestant; notwithstanding which, deputy called him and suffered him to poll—The reason given by the counsel for saying that Mr. Howly had not taken the oaths until twelve months after he had read his recantation—He knew Mr. John Ledwell, who had acted very warmly and zealously for Mr. Mathew—Saw an inscription on a board at a house, that that house was opened by Mr. Ledwell for the friends of Mr. Mathew, and had seen gentlemen go in there.

Upon his Examination by the Counsel for the sitting Member,

He said, the sheriff declared from the bench, that he would open the court at 9, and close at 4. He had heard that the deputy was displeased at some matter, but could not say that he had declined acting, but believed he might have gone to the other court, and said he would no longer act. There was an election at Fethard at the same time, but did not believe the election of Tipperary was interrupted by the Fethard election; for he knew many who attended at Clonmell, and had voted at Fethard. He did not recollect the court being open after five any day but the last. He could not say what day a great many gentlemen came in with Mr. Butler to poll for

Cross-ex-
amined by
Mr. Fitz-
gerald.

for Mr. Mathew. The reason of Sir Skeffington Smith being declared a candidate, he believes might be, because Mr. Toler and Mr. Prittie would call none who would vote for Mr. Mathew. Several voters applied to the witness to vote, and he sent them to Mr. Mathew. A number of voters came to Clonmell under Mr. Prittie's influence ; when they came there, informed the witness they intended to vote for Mr. Toler, but he afterwards saw in the poll which was daily published, their names as polling for Mr. Prittie and Mr. Mathew ; and the witness in consequence thereof, went to one or two of those whom he saw in the list, and mentioned his surprise, and said, I see you have polled for Mr. Mathew ; I understood you were to have polled for Mr. Toler ; their answer was, their wishes were with Mr. Toler, but that by Mr. Prittie's directions they were obliged to vote for Mr. Mathew, as Mr. Prittie was their landlord. He did not believe Mr. Toler and Mr. Prittie gave each other every assistance that they could, but believed that they might wish each other success.—All Mr. Toler's friends were desired by him to poll for Mr. Prittie ; and he believed he might tell them to do so. He could not say whether Mr. Toler's friends voted all for Mr. Mathew ; and did not know whether Mr. Toler might desire Sir William Osborne to postpone his polling—He lived one mile and a half from town—He was not present at the proclamation—It was daylight in the street when Mr. Mathew was chaired,
but

but the witness could not read a news-paper in a room without candle light—He remembered, that the deputy once or twice desired the person who came to him, to return to the sheriff, to let him know the numbers were unequal, and that he might continue the poll until the numbers were equal.—Sometimes the message was, adjourn while the numbers are equal, but this was not always the case ; but believed it was generally understood to be so intended—Mr. Toler was to poll first his five ; next Mr. Mathew ; next Mr. Prittie—On the second day Mr. Prittie did not get his turn—On the third day he began to make up his lost turn—He believed Pepper sometimes left town with a view to bring friends to town—Believed the deputy's decision as to Howly, was in consequence of Howly's changing his answer from twelve months to nine months, of reading his recantation—The deputy's counsel advised receiving his vote—The deputy's counsel was in the first part of the election, counsel for Mr. Mathew, his name was Ryan—There was no interruption given to the deputy during the poll—He could not say that Mr. Ryan examined the freeholders who came to poll in the interest of the other candidates—he saw him sit in the same box with the other counsel for Mr. Mathew—There was no objection made to the sheriff proceeding on the poll from nine to four—all the candidates acquiesced in that declaration, and understood that rule should be constantly observed—He believed that Mr. Toler did not call upon
Sir

Sir William Osborne, Carding and Pepper, as he looked upon them as certain, and that others might be brought up to vote; but he believed that they complained of not being polled—His book shewed the number polled on the last day in the deputy's court—He believed above one hundred freeholders were remaining to poll for Mr. Toler, on the evening before the closing of the poll—The numbers that polled for Mr. Toler on the last day were 115, in the two courts—Mr. Mathew, 77—Mr. Prittie, 118—the greatest number polled by Mr. Toler before that was 76, in one day—Mr. Mathew, 87—Mr. Prittie 95, and Sir Skeffington Smith, 11.

Upon his Examination by the Counsel for the sitting Member,

Counsel
for sitting
Member.

He could not say, whether any application was made on the last day to continue the poll—He had gone to the sheriff's court last day after dinner to poll, but continued there but a short time, while he and two others polled, and was called on in Mr. Prittie's list, to make his number up five—was but half an hour from the time he went in, until he went from the court—Sir William Osborne, Carding and Pepper were in the list of Mr. Toler's voters.

John

John Brown was produced to prove Solicitation by the Deputy to vote for Mr. Mathew; and that if he did not, his Vote should be rejected.

The witness knew the deputy by eye-sight— Another
he asked the witness to vote for Mr. Mathew; Witness.
and said that if he did not, he would reject the Examined
witness's voice—the witness said, he would not, by Mr.
and did vote for Mr. Toler and Mr. Prittie— Macart-
ney.
that was the whole of their conversation, and it
passed during the poll:

Christopher Kellett, Esq; Clerk of the Peace for the County of Tipperary, produced to prove that the Poll Books were not lodged with the Clerk of the Peace, pursuant to the Statute.

The witness was clerk of the peace for the
county, and was so at the last election for mem- Another
bers for that county—the poll books were not Witness.
delivered to him by the sheriff, at any time since Examined
the election, and the witness never demanded by Mr.
them—the witness resigned his office to a gen- Boyd.
tleman before the last Summer assizes, but still
held the patent, and was still the officer, but his
deputy acts—there was no application ever made
to him by the petitioner, or any person on his
behalf for those books—It was generally known
in the country, that he had not the books—He
resigned his employment last July, thirteen
months after the election—He attended last elec-

tion as clerk of the peace, but did not vote at that election—Has handed over the county books to the gentleman who now acts ; but never was applied to for them—The registry books and poll books might be in the possession of his deputy, for any thing he knew—no doubt they were referred to on the poll.

The Right Honourable Silver Oliver, was produced to prove the Transaction of the Bond, as stated.

Another
Witness,
Examined
by Mr.
Boyd.

The witness was directed by Mr. Prittie to give a bond to Mr. Mathew—it was an old bond that bore date eight or nine years before—another friend of Mr. Prittie asked the witness his opinion, what was to be done with this bond—the witness did not know the sum, but believed it was for 7 or 800l.—the witness recommended it to Mr. Holmes or Mr. Prittie, not to demand any payment from Mr. Mathew on that bond, but to give it up in the genteelest manner, with a civil message to Mr. Mathew—Mr. Mathew seemed doubtful whether he would take it, but took it, reserving to himself a power to act as he should afterwards think proper—This happened in Winter or Spring before the general election—the bond was delivered, and the message sent by the advice of Mr. Prittie's friends. Mr. Mathew did not give any message respecting the performance of the condition of that bond ; but there passed some private confidential conversation between witness and Mr. Mathew, concerning

cerning that bond—The witness was a referee between Mr. Prittie and Mr. Mathew, and could only give hear-say evidence concerning the bond—It was mentioned at Kilkenny, that the bond had been given for a previous agreement between Mr. Prittie and Mr. Mathew—It was the wish of the referees to throw aside every thing that might prove disagreeable; but a gentleman of as great veracity as any in this kingdom, had said, there was no condition whatsoever annexed to this bond, relative to any future election.

The bond might be for 1000*l.* but the witness could not be particular as to the sum—The meeting at Kilkenny was during the poll for the county of Kilkenny, and consisted of friends on both sides, and was previous to the election for Tipperary—the bond had been given up in Dublin long before, and the witness did not recollect that it was produced at Kilkenny—Mr. Mathew was not at Kilkenny then—the witness acted as a friend with Sir Henry Cavendish, at that meeting, for Mr. Prittie.—Mr. Ponsonby and Mr. O'Callaghan, were originally appointed to act for Mr. Mathew, as he had heard—but neither Sir Henry Cavendish nor Mr. Ponsonby attended; as Mr. Ponsonby was then attending his own election, and only Mr. O'Callaghan and the witness attended; they therefore requested Sir Skeffington Smith to assist for Mr. Ponsonby, and Peter Holmes, Esq; in the stead of Sir Henry Cavendish, to attend, which they did in conjunc-

1 Chosen
by Mr.
Oliver,
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Mr. O'Cal-
laghan.

tion with them; the one was chosen by the witnesses, the other was chosen by Mr. O'Callaghan —After these four gentlemen had met for two or three days, they disagreed, and parted without coming to any determination—The meeting at Kilkenny was to prevent two very respectable gentlemen from fighting a duel, and to accommodate matters between them, to prevent a second duel, having fought one before.

A Question being then put by the Counsel for the Petitioner, to the following Purport :

Question. Whether there was any thing, and what, demanded on the part of Mr. Mathew, by his friend, at the meeting at Kilkenny, relative to the election for the county of Tipperary ?

And that question being objected to by counsel for the fitting member,

The counsel were ordered to withdraw, and the room to be cleared.

And when the counsel and parties were admitted, the counsel was informed by the chairman, that he was at liberty to put that question to the witnesses.

Mr. Oliver, in Continuation.

It was a transaction of a long standing. When the referees met at Kilkenny, Mr. O'Callaghan and the witnesses, were very uneasy about the other gentlemen not meeting, and proposed that
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the two brothers of the gentlemen should be called in in their stead—In the course of a conversation which continued so long, he could not recollect particulars—Mr. O'Callaghan when they first met, desired that they should not look into these old papers and things, but try to reconcile measures between the gentlemen, and endeavoured by twenty different methods, backwards and forwards for that purpose—there were many proposals made relative to giving and keeping back voters on the ensuing Tipperary election—An agreement from the last election was mentioned, and some laid a stress upon it, but a gentleman of great veracity, having offered to prove upon oath, that there was no such former agreement, and the witness himself did not think there was any such agreement, and though Mr. Mathew's friend said something about the agreement at the last election for a junction, it had no weight with the witness—The bond had been executed after the last general election but one—The referees differed, but did not break off, for they endeavoured to do every thing to accommodate, but nothing final was done—He believed the proposal made at Kilkenny, was in consequence of the bond—In the course of the conversation, it was mentioned that Mr. Prittie was to give votes to Mr. Mathew ; but to the best of the witness's recollection, it was not mentioned that Mr. Mathew should pay the bond—It was often proposed, that Mr. Prittie should give his votes to Mr. Mathew, but the line the witness always urged,

urged, was that Mr. Prittie should stand neuter ; and that during the whole course of that meeting, the witness was as delicate with regard to Mr. Toler's interest, as Mr. Mathew's—That something no ways connected with the election, was his reason for acting ; it was often urged, that so many voices should be given for Mr. Mathew, and the witness urged the same for Mr. Toler—Mr. Mathew's friend did not urge any thing as a favour, but on the ground of the agreement, which was endeavoured to be established, and the witness was very clear that no such agreement had ever existed ; after the gentleman had on his honour declared, he would swear that such agreement did not relate to any election—Witness did not know whether their determination was to have any effect on the election, it not being the witness's principal object of attending—he was much more attentive to prevent disagreeable consequences—He did not know what was the object of the other gentlemen—He had already told the committee, the substance of what he was directed to say from Mr. Prittie to Mr. Mathew ; and had no authority from either party to say any thing about the election—Mr. Mathew did not insist upon any thing—Mr. Mathew in consideration, gave some weight to this bond ; but the witness told him it had no weight with him, and gave him his reasons for it.

Upon

Upon his Examination by the Counsel for the sitting Member.

On the last election but one, Mr. Mathew and Mr. Prittie were joined—Sir Thomas Maud had a great majority over both at that election, and the contest then lay between the two friends—he believed the bond in question related solely to that former election, and that it did not relate, nor had any reference to any future election—He believed Mr. Sadler, Mr. Prittie's father-in-law, transacted the whole affair of that bond, on the last election but one, for Mr. Prittie—Mr. Smith, and Mr. Sadler appeared to him to be the persons who transacted the affair—and Mr. Sadler was the person he meant, as the very respectable person—The witness wished Mr. Prittie to stand neuter, and thought it his best line—Mr. Prittie divided his votes equally between both at the last election, and the witness believed Mr. Prittie stood neuter—He knows Mr. Prittie to be a gentleman of honour, and that no man was possessed of more honour or spirit, and did not think that he gave half his interest to Mr. Mathew, in consequence of any bond or pecuniary consideration—The witness was *very*, *very* certain Mr. Prittie could not be awed into giving his interest for Mr. Mathew, and did not believe it was to cement an old friendship, that Mr. Prittie gave his interest to Mr. Mathew—he gave his voices agreeable to the desire of his friends,

friends—he had certainly mentioned that the bond had a reference to the late election—The witness did not believe that the voices would have been divided, had it not been for that meeting, and believed, but knew not that such voters might have voted for Mr. Toler. The bond had been given at the close of the election before, and considered it as for the payment of money—Any concession that was made was not made in consequence of that bond, but was on account of a private mistake, that the witness did not wish to be made public. There was nothing that struck him, the witness, whether Mr. Toler was doubtful whether he should give his interest to Mr. Mathew or Mr. Bagwell—he could not form a precise belief, whether Mr. Toler might not have given his interest in favour of Mr. Mathew, if requested; but Mr. Toler told him there was no junction between him and Mr. Mathew.

Francis Macnamara, Esq; produced to prove the Transaction of the Bond.

Another
Witness.

He recollected he was sent by Mr. Mathew to Mr. Prittie, to pay him the contents of a bond, the spring assizes before the last election for the county of Tipperary—he could not say what the sum was, whether 800l. or 1000l.—he had had no instructions from Mr. Mathew to tell Mr. Prittie that he expected he was to perform his condition on payment of this bond—that Mr. Prittie

Prittie was much surprised that Mr. Mathew should send to him for that purpose ; as he, Mr. Prittie, had given the bond to Mr. Oliver to return to Mr. Mathew—The witness understood from Mr. Mathew, that he expected Mr. Prittie's friendship ; but could not positively say, whether it was in consequence of that bond, that Mr. Mathew formed his expectations, for Mr. Mathew had told the witness in several conversations, that if Mr. Prittie did not serve him, he expected he would act a *neutral part*. By *serving him*, the witness understood, he meant giving *him his interest* on that election. The witness went from Mr. Mathew to Mr. Prittie, to know what part he would act, and whether neutral or not ; to which Mr. Prittie would not give him any answer. After the last message he went on to Mr. Prittie, a duel ensued—the witness never mentioned any thing in consequence of the bond, but that Mr. Mathew would pay it—He never understood from Mr. Mathew, that he expected any other terms from Mr. Prittie than that he would act a neutral part—He understood from Mr. Mathew, that that bond was passed to Mr. Prittie in consideration of his interest at the former election—The witness was but a few hours in Clonmell before Mr. Mathew sent him upon that message to Mr. Prittie, and could not tell why the payment of the bond was postponed—He did not know of any advantage which Mr. Mathew derived at the subsequent election, in consequence of any condition relative to that

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bond.

bond. The only claim made by Mr. Mathew was, that Mr. Prittie should act a neutral part ; but knows no foundation for that claim, except a promise alledged to have been made by Mr. Prittie. The claim of neutrality was made on the same day, or the day after the tender of payment was made.

Upon his Examination by Counsel for the sitting Member,

Cross examined by
Mr. Fitzgibbon.

He has heard that on the election in 1768 Mr. Prittie gave his interest to Mr. Mathew, and believed the bond was given in consideration of Mr. Prittie's withdrawing in favour of Mr. Mathew, in order to purchase a seat for Mr. Prittie. The witness heard so twelve months before the last election, and thought Mr. Prittie incapable of acting under the influence of a bribe, as he is a man of great spirit and honour ; and the witness would be sorry to have such an opinion of Mr. Mathew, as that he would give a bribe, nor did he ever understand that the bond was given as a bribe.

Edward Pittman was produced to prove the Production of fictitious Freeholders on Behalf of Mr. Mathew.

Another
Witness.

He was present on the last day of the last election for Tipperary, and also at the whole of the election every day ; he took the poll for Mr. Toler

Toler in the sheriff's court. It had been agreed, that the sheriff was to sit from ten, and take the poll until five, upon the proposition of Mr. Baker, who was agent to Mr. Toler, which was not disagreed to by the other side; and the sheriff said nothing on the occasion. On the last day of the election, the poll was closed about eight o'clock, as he believed, and the proclamations were made afterwards—Believed Mr. Toler polled 105 on that day in the sheriff's court—Mr. Prittie 109—Mr. Mathew 66. On the fourth day, Mr. Toler polled 2—Mr. Mathew 2—Mr. Prittie 2, and Sir Skeffington Smith 1—Did not recollect whether any candidate desired to poll more upon that day; and the poll closed that day about three o'clock as he believed—He could give no reason why they polled so few, or the cause of so early an adjournment. On the seventh day Mr. Toler polled 41—Mr. Mathew 41—Mr. Prittie 52—Sir Skeffington Smith 5, which was the greatest day's poll except the last. The total gross poll on that day was 74—In the sheriff's court on the last day, Mr. Baker applied to the sheriff to continue the poll by adjourning it to the next day, who refused it; and Mr. Baker then said he would keep it open by different proclamations till one o'clock on the next day, as he heard a good many came in on the next day to vote on behalf of Mr. Toler; but this was hearsay only—He knew Sir William Osborn, Carding, and Pepper, did not poll in the sheriff's court—did not recollect to

have seen any gentleman the next day in Clonmell who had not polled—He knew the lands of Loughnapolla; there were many polled out of it at the last election—He knew the denomination of land called Racoonna, they adjoin each other, but are subdivisions of one grand denomination called Thurles—he believed that they are both held by Mr. Matthew Murphy, but knew not by what lease. Mat. Murphy had been in possession of these lands since the death of James Murphy about seven or eight years ago, who held them under Mr. Mathew for a term of years which had since expired, and a new lease had been made by Mr. Mathew to Mat. Murphy, and he was then in possession of them, and had been so for seven or eight years then past. Mat. Murphy was a reputed papist—There are about fifty-six acres in both denominations; he had been upon the lands and formed his opinion from viewing them. James Murphy, the deceased, was a reputed papist. Mr. Murphy the reputed landlord, pays a rent of 50s. an acre, as the witness was informed. There is very good ground near the town of Thurles, and the witness thought it well worth 50s. an acre; it was under stock—He believed twenty or twenty-one persons polled off these denominations, as appeared by his book of poll for the sheriff's court; they polled for Mr. Mathew and Sir Skeffington Smith, and none of them for Mr. Prittie or Mr. Toler—he believed the stock to be Murphy's—he believed these lands are divided in different divisions.

divisions. There were two large fields well enclosed called Loughnapolla—he did not know how Racoona was divided, whether into one, two or three fields, but there was no house on both town lands but Mr. Murphy's—He never heard that any of the twenty one who polled, were ever in possession of any part of those lands—He lived within a quarter of a mile of those lands, and personally knew the whole twenty-one who polled; they lived in Thurles—He believed that they or any of them could not be in possession of those lands without his knowledge: they all voted as forty shillings freeholders, and said Mr. Mathew was their landlord, but refused to tell whether the lands were in their own possession, or let to a tenant. John Fitzgerald was objected to, and he said, that he had one acre of land, and had set it—He declared that Mr. Mathew was his landlord, and that he held his freehold by lease, from November was twelve months before the election, at one shilling per year, and set it at two pounds nine shillings and six-pence; and the remainder of the twenty-one made like answers;—they all had taken the freeholders oath.

It being here agreed on both sides, that the Sheriff had not been summoned,

The committee room was cleared; and upon its being opened, the following orders of the committee were communicated to the petitioners, sitting member, their agents and counsel.

Ordered,

Ordered, That the late high sheriff of the county of Tipperary, be ordered forthwith to attend this committee, with the poll books of the late election for that county ; and that the agents for the petitioner and the sitting member, be directed to serve the said order, upon the said late high sheriff.

Resolved, That the examination of Edward Pittman, the present witness, with respect to certain persons, said to have voted at the late election for the county of Tipperary, will come more properly before the committee, after the high sheriff with his poll books shall have appeared.

Ordered, That the clerk of the peace of the county of Tipperary, be forthwith ordered to attend this committee, with the registry of the forty shillings freeholders of the county ; and also with the poll book of the late election for that county.

And at a future day, these orders being complied with,

Mr. Edward Pittman's Examination was continued.

The same objection lay against the whole number of the voters that was made to John Fitzgerald.—The witness was attentive to the conduct of the sheriff, and remembers he was pressed by Mr. Toler's friends to prolong the poll
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on a Saturday, and by Mr. Holmes in particular, who is a freeholder, who polled for Mr. Prittie and Mr. Toler. It was between three and four o'clock, when the sheriff was applied to for that purpose, which he refused, as he said, he was to ride twenty miles that day to dinner—About six o'clock in the evening, after the witness had dined, he saw the sheriff in the street of Clonmell—On the gross poll for all the candidates, on the last day, 167 was offered, and four of them only were rejected in the sheriff's court—a great deal more were polled on the last day, than on any other day during the poll; and the sheriff did not come into town on the Monday following, after he had refused prolonging the poll on the Saturday, until between twelve and one o'clock; he was not certain when the poll began that day—He believed it was after one; there were many freeholders, friends of Mr. Toler, waiting early on that day to poll; and believed there might be many of Mr. Mathew's—He knew the town of Thurles, it was the estate of Mr. Mathew—there were many voted out of that town who lived there—he believed about forty polled out of that town and neighbourhood, which did not exceed half a mile; he knew a good many of them—knew John Lidwell, to be a very particular friend of Mr. Mathew, but did not know that he was employed by him—He knew Martin Flin, a nailor, who polled for Mr. Mathew, as a ten pounds freeholder, the witness had prepared leases between

tween him and Mr. Chichester Bolton, for the lands he voted out of, for a term of thirty-one years, in the July or August before the election. He believed Mr. Bolton got it by will from the bishop of Cashell; he declared the estate was the estate of Mr. Bolton—he voted out of houses and a little garden—the witness was witness to Flin's lease—He was objected to, but took the freeholders oath—The sheriff was not informed of the nature of Flin's title; the objection was for want of freehold—he claimed under a lease made twenty-eight years ago by Mr. Bolton—Flin was married to a papist. He knew Mr. Arthur Ardagh very well, but did not know whether he polled or not.

He was examined by the Counsel for the Sitting Member,

He attended at that election as agent for Mr. Toler—Several proclamations were made on the last day of the election; he believed there were three proclamations made, the first about seven. He was not certain of the proceeding, from his being alarmed at reports, that Mr. Toler was running a-head of Mr. Mathew, and that the mob intended to seize the agents and counsel, and burn the poll books; the witness was informed so by Benjamin Phelan; there were a great number of people, but no acts of violence committed. The witness was not a freeholder—All the clerks who were freeholders, polled near the close of the poll, for the different candidates,

didates, and believed they polled before any proclamation was made—There was not any freeholder after the first proclamation, who tendered to vote, who was refused by the sheriff—he believed there elapsed two hours between the first proclamation and the final close of the books—he took no entry of the hour when the first proclamation was made; there was about an hour between the last proclamation, and the time the sheriff left the court. The books were closed about half an hour or better before the sheriff left the court, as he believed—he did not recollect that any one polled or offered to poll after the last proclamation—he believed that some polled after the first proclamation—he believed that no candles were brought into the court on the last day of the election—he was certain the books were closed by day-light—he did not recollect who they were that polled after the proclamation. Mr. Mathew declined polling between one and two o'clock for two hours, between the last man he polled, and the next he brought; but Mr. Mathew reassumed the poll, and polled many after—Mr. Toler and Mr. Prittie continued the poll through the day—Mr. Mathew and Sir Skeffington Smith were chaired late in the evening, about an hour or better, after the poll closed—near an hour was taken up about disqualifying one of the four who were rejected—when they were chaired, he could not see to read in the room. Mr. Prittie was in Clonmell, and was not chaired—the mob were better pleased

to chair Sir Skeffington Smith. The morning was very wet, the evening dark—He knew Mr. Ledger to be sent backwards and forwards, from court, to court of messages : Ledger was employed by Mr. Mathew, but did not recollect to have seen him give messages by whispers to the sheriff ; but saw him often speak to Mr. Mathew—he could form no judgment why the sheriff would not adjourn the poll to Monday—Knows no other denominations of the names of Loughnafulla and Racoon, in the county of Tipperary, but the two he mentioned ; the twenty-one who voted reside in Thurles—they never were considered as freeholders by him, or any one else, as he had heard ; he did not recollect all their names ; objections were made to them when they came to poll ; but they appeared to be regularly registered in April 1775, and the witness was present at their registry—there were many more than twenty-one at that time registered out of the same denominations ; he believed from twenty-seven to thirty : there were two of this number present, of the name of Pittman, his father and uncle, who registered at the same time, but did not poll—he believed they were honest men—he heard those people never got their leases ; he considered them as rent-chargers, his father never got his lease, he never saw any of them, but heard that there were leases made to them by Mr. Mathew—the leases were made in 1775, and then registered ; he believed they never registered before that time—he looked
upon

upon them only as rent-charges, and that they were occasionally made to serve Mr. Mathew on the last election—he believed that some of them have asked for their leases, but did not get them—he believed that if his father had applied for his he would not have got it; he never saw the leases, and never heard his father or uncle express any resentment for not getting their leases; he believed that none of those twenty-one were in possession of those lands, nor paid any rent for them; his father and uncle did not poll. Mr. Baker applied to the sheriff to adjourn to the next day, as there were other freeholders who had not come in, but was refused—did not know whether this application was previous to the first or second proclamation. Mr. John Toler desired them to proceed—Mr. Mat. Murphy had a lease of these denominations, and was then in possession. He believed his father and uncle would have voted, but were not called upon—he believed they would have voted for Mr. Mathew, but he had no occasion to call upon them—Cannot say whether they would have taken the freeholders oath. When they registered they took the oath.

Ferdinand Dudley was produced to prove undue Influence.

He knew John Lidwell, of Drumard—the witness was a freeholder twenty years before the last election for Tipperary. He was applied to, both before and at the election, for his vote,

Another
Witness.

but the first application was by Mr. Toler, and the witness had promised him; all the candidates, and Mr. Mathew in person, applied to him, as did his friend Mr. John Lidwell, afterwards; the witness had two sons, who are freeholders in that county; when Mr. Lidwell applied to the witness, he shewed a letter from Mr. Agar, one of the commissioners of the revenue, which he read to the witness—that there was a commission in the excise, ready for any friend of Lidwell's, who would serve Mr. Mathew; the witness told Mr. Lidwell, that he had promised Mr. Toler, and that he was unwilling to break his word; the witness went to Clonmell, Mr. Lidwell met him often in the street, particularly one evening, and told him, that until he, Mr. Lidwell, got that commission for the witness's son, he would give him a rent charge of forty pounds per annum, upon his estate, and that the witness should have landed security for it, if he would break his word with Mr. Toler, and serve Mr. Mathew. The witness met Mr. Mathew in Clonmell, who made repeated applications to him for his interest—Mr. Mathew said that one of Mr. Toler's freeholders, was the night before, kicked and rolled in the street—the witness replied, may be he deserved it; for my part, I shall keep better hours, and not deserve it.

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He was examined by the Counsel for the sitting Member.

He knew Mile Burke, who was present at some conversations between Lidwell and him, and who had also applied to the witness for his vote, but not so frequently as Mr. Lidwell. The letter was shewn to the witness, at his own house in Roscrea, but not in the presence of Burke. Mile Burke said, it would be better for the witness to go along with him, it would be some advantage to him, and would get him something in hand. The witness believed he would have got something—never held out his palm for the purpose of receiving money. It was known that his sons would vote with him; he had seven votes at that time; he and his two sons polled for Mr. Toler and Mr. Prittie—Mr. Lidwell was a man of property—he saw Mr. Lidwell often with Mr. Mathew at Roscrea, soliciting votes; there was no person present when the letter was shewn to the witness; it was not shewn a second time when Mr. Burke was by at Clonmell. Mile Burke told him, he might have a rent charge upon *his*, Mile Burke's, lands if he chose it—the witness could read, but did not take the letter into his hand; it was addressed to Mr. Lidwell, who read it, and mentioned that whatever the witness's friend wanted in the revenue, he should have it. The witness could not tell whether that was the whole of the letter, and believed there

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there might be more in it. Mile Burke was a man of pretty fortune, and good character, but did not live in the county of Tipperary, he lived at Newport.

Joseph Baker was produced to prove Partiality in the Returning Officer.

Another
Witness.

He knew Mr. Denis O'Brien, he saw him before the last election for the county of Tipperary: the witness was walking or limping, at the South side of Stephen's Green, three weeks before the last election, and was stopped by a man in livery, who said his master wanted to speak to him; the witness asked, who was his master, and being answered, Mr. O'Brien, the attorney, (the witness meant the deputy at the election), he desired the servant to go back to his master, and tell him he was unable to go to him; but that his master might come to the witness, if he wanted him; and Mr. O'Brien accordingly came up in a very expeditious manner, and declared he was very sorry for the condition he saw the witness in, and took him by the hand very warmly, and said, "You and I, Baker, are concerned on the same side on this election." The witness then asked him, which side he was concerned on, and Mr. O'Brien said, for Mr. Mathew—The witness replied, that, from the unhappy situation he was then in, it would be impossible for him to be able to attend any election—Mr. O'Brien then said, Mr. Mathew told him, he apprehended he, (the witness)

ness) was absolutely engaged to him, as all his (Baker's) family, would vote for him—that thereupon the witness said, that notwithstanding, as bad as he was, he would shew him the difference, God willing, on the Hustings, on the twenty-ninth of May, at Clonmell—Mr. O'Brien, then very politely offered the witness a seat in his own carriage to Clonmell, but he declined it, saying, he would travel at his own expence—he attended as an agent for Mr. Toler, and was in the deputy's court, the first four days of the election—his intention was to attend Mr. O'Brien during the whole of the election ; but a circumstance obliged him after to attend the sheriff's court—One of the clerks below refusing to act there—The agent came to the witness, and said he must go down and attend the sheriff's court—to whom the witness replied, “ I will not, for “ the fate of this election depends on my attending O'Brien, for all the *venison*, all the *bucks*, “ will be brought up stairs”—the witness, however went to the sheriff's court, and staid there from the fourth day, to the close of the poll—He observed the sheriff's conduct—On the day the election began, the witness was the person on behalf of Mr. Toler, who proposed the terms of drawing lots for sides—as also for polling first, and the hours of beginning and adjourning the poll ; which terms were assented to by the candidates, and the poll was begun at ten, and adjourned at four—It was a tacit assent of the candidates, and the sheriff thereupon declared, from
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the bench, the hour of beginning and adjourning the poll, and the poll went on quietly that day—but these terms were not kept up to, for the sheriff never came into the court at the hour appointed, except one day—The sheriff's conduct was unequal to the candidates—John Tapham was tendered on behalf of Mr. Toler, and was continued a long time on the table, before the witness could establish his vote, but after he had established him, Colonel Massey was sent for, who came into court before he tendered his vote, and called out to him, “Look at me” in an odd kind of manner, “I vote for Mr. Mathew.”—Tapham then said, he would vote which ever way his honour pleased, and several gentlemen of the first consequence, called out, “Poll, poll”—Colonel Massey polled for Mr. Mathew; he believed he polled for Mr. Toler also—On the next day the witness tendered a freeholder, and having established him, whispered him, not to forget *Toler* and *Prittie*, on which the sheriff rejected the vote, for the witness having whispered him—Another voter was tendered for Mr. Toler, and after having taken the freeholders oath, and being admitted to be a good voter, polled for Mr. Mathew; but immediately after his having polled, having recollected himself, said that he intended to have polled for Mr. Toler, and that by mistake he had polled for Mr. Mathew, but the sheriff said, it should continue so, and would not alter it—The witness did not know in whose list this voter was—The witness

was

was in court the last day of the election, and called upon the sheriff at four o'clock, and told him he was greatly fatigued—Sir Skeffington Smith having then declined, and Mr. Mathew having stopped polling for some time, and then declared, “ I now *stop* polling on account of “ Colonel Toler, do you stop on behalf of Mr. “ Mathew,” and then desired the sheriff to adjourn agreeable to the terms of the first day—whereupon he was asked, whether he *declined*—The witnesses then replied, he knew the difference between *declining* and *stopping*, but the sheriff answering, that he would declare the members before he quitted the bench, the witnesses told him it was illegal, and unconstitutional, as the sheriff should adhere to the hour of adjournment, agreed upon at first, and made use of every effort to prevail on him; as the witnesses informed him, that Mr. Toler had many voters more than were then in town, that would come in the next day, if the court should be adjourned; and also that he, the sheriff, could not declare the members, for that, if the witnesses had but a dozen voters, he would keep the sheriff eighteen hours in polling them; and desired he would call the first proclamation—The sheriff proceeded to the proclamation; and there was a second proclamation—The witnesses again requested an adjournment, and polled several voters for Mr. Toler, after the first proclamation, and repeatedly desired the sheriff to adjourn before that proclamation—The sheriff was also applied to by several

freeholders for that purpose ; but the poll was closed finally after eight o'clock—It was so dark, that he could scarcely see the candidates on the table ; but when he came out into the street, he could see much better—Saw plainly the candidates chaired—The first proclamation was made after five o'clock, but could not be particular as to what hour it might be after six—He could not say whether the indentures were sealed in court, nor could he say, whether Mr. Mathew ever applied to the sheriff to postpone the adjournment—The sheriff adjourned some days at two and three o'clock—The witness could not say, whether the sheriff continued the poll on any preceding day after four o'clock—Never knew from the twenty-ninth of May, to the last day, that Mr. Toler was slack of votes, as the witness was always supplied with lists.

He was examined by the Counsel for the sitting Member.

He could not say whether the writ was returnable on the next day after the poll was closed—He attended in court the whole time it sat—Mr. Toler never desired him to desist, but might have said it without the witness's knowledge, while he attended—Mr. Tydd was counsel for the sheriff in his court—He never heard Mr. Toler say, that he had not any more pollers.—The witness never said that his *cocks* were out, and that he would now *pit a blinker*—never acknowledged

knowledgeed that he made use of that expression, since he came to town—He came to town on the yesterday sevensnight, before his examination—The sheriff did not refuse any votes after the proclamation; the witness polled some after the proclamation—He could not say that Mr. Toler had a single vote at that time in Clonmell, and mentioned it as a reason for the sheriff to postpone—that Mr. Pepper had told him that the next day there would be some voters in town, and the witness saw six on the next day coming to town with Mr. Pepper, to poll for Mr. Toler; but did not know them personally—the witness kept all the docquets—The sheriff did not come into court one day until five o'clock; the witness could not tell what day that was. The sheriff was a new married man, and went on Saturday to see his wife about twenty miles distance—The sheriff did not protract the election himself—The witness believed, that Bryan Phelan might have intended to poll for Mr. Mathew, but could not say, whether he intended to vote singly for him, but believed he said so; but the sheriff entered him for Mr. Mathew singly, and said it was no matter, Mr. Prittie having so great a majority—The witness dined at William's, in Clonmell, to his great grief—He believed he might poll five after the proclamation. The witness's reason for giving up the poll, was, that a gentleman advised him not to protract it any longer, for that it would be a folly, as Mr. Toler had not voters, and that Mr. Mathew would get the bet-

ter of them in voters, and he required the court to be adjourned merely to serve Mr. Toler, by letting his voters have an opportunity to vote on the next day, and not for any unnecessary delay.

Peter Holmes, Esq; was produced to prove the Influence of the Bond on Mr. Prittie.

Another
Witness.

The witness was married to Mr. Prittie's sister, and acquainted with some of his affairs; as also with the part Mr. Prittie took on the election, and how he disposed of his interest—Mr. Prittie had a considerable interest in that county—thought there was an application made by Mr. Macnamara, on behalf of Mr. Mathew, for his interest on the late election, because a message was delivered, mentioning a desire that Mr. Prittie should assist Mr. Mathew, with his interest. The witness was present when Mr. Macnamara made the application, and mentioned that he was authorized by Mr. Mathew, to tell Mr. Prittie, that he was ready to discharge the contents of a bond. As the witness recollected, Mr. Macnamara delivered two or three messages at different times in the space of less than an hour, and he conceived, that Mr. Macnamara came to procure Mr. Prittie's interest on that election, for Mr. Mathew—Mr. Prittie answered, that it was his intention to stand single and unconnected—and, it was after that answer, that Mr. Macnamara mentioned the transaction of the bond being to be paid; whereupon Mr. Prittie mentioned,

oned, he must decline receiving the contents of that bond, having previously sent the same to Mr. Mathew, by Mr. Oliver. The witness knew nothing of the bond of his own knowledge, or any transaction about it. It appeared to the witness, that some idea of a supposed claim, or agreement, was entertained by Mr. Mathew, or his friends, that Mr. Prittie should serve Mr. Mathew with his interest, at the late election; but Mr. Prittie declared, he knew of no such agreement or engagement; and this was near the general purport of the different messages delivered by Mr. Macnamara to Mr. Prittie—The witness did not recollect that the claim of Mr. Prittie's interest was mentioned to be founded on the bond; but it appeared to the witness at different times, that the bond was considered by some of Mr. Mathew's friends, as a sort of presumptive evidence, of a supposed agreement for Mr. Prittie's interest at that election—He never heard Mr. Mathew say a word upon the subject himself, and did not suppose that any such agreement ever existed—Mr. Macnamara proposed paying the contents of that bond, at the Spring assizes before the election. Subsequent to that proposal, there was a meeting at Kilkenny, of the friends of these gentlemen, on account of some unhappy differences. The intention of the meeting was, that mutual friends should interfere, to conciliate differences, and remove prejudices—and there was a meeting accordingly, and from what passed at that meeting, the witness collected the

the

the idea he had mentioned of the bond ; as some of Mr. Mathew's friends there considered that bond as express evidence of that agreement. A letter from Mr. Richard Butler, of Drum, was shewn concerning a conversation supposed to have passed at the former election, with Mr. Sadler, by which it was considered, that that agreement was for a future juncture; which letter when produced to Mr. Sadler at Kilkenny, Mr. Sadler, who is a gentleman of a very respectable character, declared, and offered to support his declaration by oath, that Mr. Butler had misapprehended him, for that no conversation to that purport, as stated in that letter, ever fell from him—Mr. Prittie had early declared, that he would stand single and unconnected, and that the dividing his voices between the two candidates, was in pursuance of that idea, of preserving a neutrality ; as the witnesses recollected, the number of voices on Mr. Prittie's own estate, might be ninety-five, or thereabouts, and he supposed there was an equal division of them, for Mr. Prittie's idea was, that it should be so—The mode of carrying that idea of neutrality into execution, was not settled until about the eve of the election. He could not tell whether this mode would have taken place if the bond had not existed, and if he had not bound himself by a declaration of standing single and unconnected, his conduct might have been otherwise. He believed that Mr. Prittie and his friends, thought Mr. Prittie released from all claims from Mr. Mathew,

Mathew, by pursuing that conduct, by which Mr. Mathew got nearly half of Mr. Prittie's freeholders.

He was examined by the Committee.

He had heard Mr. Prittie say several times, that he had no inclination of converting that bond to his private emolument ; and was conscious a claim of Mr. Prittie's interest was made, in consequence of a supposed agreement ; and believed, that if Mr. Prittie had received the money on that bond, it would have been an acknowledgment of a supposed agreement, and as a friend of Mr. Prittie's, this witness would have been afraid that that interpretation must have been put upon it—He could not say whether Mr. Prittie's partiality was from his own inclination, or from the advice of friends. The idea of standing single and unconnected, which implies no junction, was first adopted before the message was delivered—He believed the bond to have arisen out of a former transaction—On the close of the election preceding the former, an agreement had been found between Mr. Smith and Mr. Sadler, and believed that the bond had been passed upon that transaction—The witness was not present at all the conversations which passed on that occasion—Mr. Macnamara made a claim that Mr. Mathew expected Mr. Prittie's interest on the future election ; but knew not whether Mr. Macnamara stated a claim of neutrality ; but Mr. Prittie's interest at large was demanded

demand—Believes Mr. Prittie's conceiving that an unfounded claim had been made upon him, might have become ill disposed to one of the candidates; but this disposition of mind must have happened subsequent to the first meeting—He did not know Mr. Prittie's tenants; some of them would have, perhaps, polled one way, some another; but as Mr. Toler lived on the spot, he perhaps might have had the greatest part of them. If there had been no claim made by Mr. Mathew, or if there had been no meeting at Kilkenny to adjust the differences, Mr. Prittie, he believed, would have consulted his friends, and have adopted whatever mode they should advise consistent with the former declarations—The witness believed that Mr. Prittie and his friends thought standing neuter was the most prudent manner, and during the poll he procured great advantage, and thereby gained the friends of both Mr. Toler and Mr. Mathew, and forwarded himself on the poll; which was one motive of that determination, as being considered a mode that would put an end to differences, and yet not be inconsistent with former declarations except the last—There was no agreement made at Kilkenny; but after that meeting, there was a conversation between the witness and Mr. O'Callaghan, at the eve of the election, and in consequence of a conversation between them the preceding evening, the agreement of neutrality was there determined on—The witness believed the meeting was with the appro-
bation

bation of the parties: A question was here put to Mr. Macnamara, who answered, that he believed Mr. Holmes had been present at the conversation, when the claim of neutrality was mentioned.

Mr. Holmes's Examination was then continued.

He believed that in consequence of that agreement the votes were divided—He was present during the whole election, except the morning it closed, and was sometimes in one court and sometimes in another, but mostly in the deputy's court—He knew D. O'Brien: his inclinations were for Mr. Mathew in general—He did not recollect that he, the witness, demanded a continuation of the poll in the sheriff's court, but did in the deputy's court, and was applied to by several gentlemen to apply to the sheriff, that he would remove the inconvenience of the adjournment, and direct the deputy to open the court again—He knew nothing of the preliminaries—he had proposed Mr. Prittie, and then quit the court. At some times directions came from the sheriff to the deputy to adjourn—The witness requested the sheriff to expedite the election, stating the inconvenience of protracting it to the county at large; and also that the writ was returnable the day after the close of the poll—He believed there were frequent applications for continuing the poll, and believed it might have continued upon some of those applications in the deputy's court—The witness was Mr. Prittie's

H

friend

friend—He believed the sheriff sometimes sat until five o'clock.

John Cox, Esq; was produced.

Another
Witness,
to prove
Influence.

The witness had seen John Lidwell at the election, who was a very active and strenuous friend of Mr. Mathew; as in one instance, he had seen a house in Clonmell, during the election, over which there was an inscription, mentioning *Entertainment for the Friends of Mr. Mathew, by John Lidwell, Esq;*—The witness was counsel for Mr. Toler, and frequently saw Mr. Lidwell take voters from place to place, during the time of the election; and Mr. Lidwell was very strenuous and active on Mr. Mathew's part during the election—He could not recur to particulars—He had never seen Mr. Lidwell act for Mr. Mathew, prior to the election, nor did he ever see him solicit any votes in company with Mr. Mathew—He saw numbers of people in that house of Mr. Lidwell's, which he had before mentioned; whether they were freeholders or not, he could not say. The witness considered that house as a kind of rendezvous for Mr. Mathew—It was a house which had been taken occasionally by Mr. Lidwell, as the witness heard, and curiosity led him to see it.

Here the petitioners rested their case, saving to themselves a right of discussing such points as might relate to and arise from the poll books; but on the succeeding sitting day, they brought forward another witness.

Mr.

Mr. William Greenshields, who was objected to by Mr. Kelly, on behalf of the sitting Member, as the Petitioners Counsel had on the last preceding Day, rested their Case, saving what should be necessary on seeing the Poll Books; but the Witness was Sworn.*

He had attended the whole time of the last election for Tipperary, mostly in the deputy's court, and sometimes in the sheriff's, and took memorandums at the time he was agent for Mr. Toler. On the seventh of June the deputy went into court to hold the poll, at twelve o'clock; but knew not of any adjournment—On the eighth of June the sheriff adjourned the court at a quarter after three, though called upon to proceed by the agents of Mr. Toler, which he refused. The sheriff went into court on that day at twelve o'clock—The deputy went into court, on some days at one o'clock. On the fifth of June, the deputy went into court at half after twelve o'clock, and adjourned at three. On the sixth of June the deputy went into court, at or near twelve o'clock, and the sheriff went into court on the same day at half past eleven. On the tenth of June the sheriff went into court at one o'clock and adjourned at half after two. Many voters applied to the witness, knowing

Examined
by Mr.
Boyd.

H 2

him

* It does not appear from the minutes, whether the counsel waived the objection, or the committee ordered the witness to be sworn.

him to be Mr. Toler's agent, to get them polled, or that they should not be able to attend, and he made application on the tenth of June to the deputy for to poll them, which he refused, when the sheriff's court was sitting; and on the same day the deputy called out to know, if any body was waiting to poll for Mr. Mathew, and there being no answer made by any one, he then adjourned the court. The witness was certain, that at that very time, there were above one hundred freeholders in court, waiting to poll for Mr. Toler, and the deputy adjourned, though he was informed of their attendance—Several of the freeholders complained, that if they did not get leave to poll they must go home, and the witness knew that the deputy knew of their wanting to poll. Edward Crampton said he would poll for Mr. Toler singly; he and his father had been teasing the witness for four days to have them polled; the father was polled for Mr. Toler, but Edward afterwards polled for Mr. Mathew, and did not poll for Mr. Toler. The witness supposed Edward Crampton to be a freeholder—he had often applied to the witness to poll for Mr. Toler; and the witness believed, that Crampton would have voted for Mr. Toler, had he been polled at those times, when he applied.—The witness made these observations from abstracts entered in his book at the time they happened, and made in court; but he did not keep a regular account, nor did he

mind

mind how he entered them, but as his book accidentally opened.

He was examined by the Counsel for the Sitting Member.

The entry of the eighth, which appeared in his book to be antecedent to the fifth, was accidental—He remembered a bustle in the court; but not the day on which it happened. The deputy never continued to sit after he had received directions from the sheriff to stop—The witness had been present, when the polling stopped without directions, as to *his* hearing; but did not know whether the deputy might not have received directions—He never heard, that the deputy after receiving directions to stop, applied to the sheriff to continue another round, at the request of Mr. Holmes, on the behalf of Mr. Prittie—He did not regularly attend the deputy's court; but must have made the requisition without his knowledge—He believed, that there might be several freeholders unpolled, on the part of the other candidates, on the close of the poll, on several days, as well as for Mr. Toler; but believed, that on one day, the tenth, there were none that answered, on the deputy's asking whether there were any more to poll for Mr. Mathew—He did not recollect that any of those who applied to him to be polled, were such as would have polled for Mr. Toler and Mr. Mathew—His only reason for taking notes, was, because the

courts were held so irregularly on those days, in which so many were pressing to vote—The witness had no opportunity of polling Edward Crampton, who told him his reason for polling for Mr. Mathew was, that he was wearied out, and could stay no longer in town, and who said, he would have polled for Mr. Toler, but that he detained him so long—The witness was present on the last day of the poll, but could not recollect the hour it closed at, but it was late ; and an application was made on behalf of Mr. Toler, to the sheriff, to adjourn the poll until the next morning, which the sheriff refused, but said he would keep the court open as long that day as the candidates pleased—The witness was in court at the commencement of the poll, on the first day, but did not recollect any time being mentioned for opening or adjourning it—Pepper attended to poll, but being told by the witness, that the poll would continue longer, he went out of town, and thereby was not polled, and the poll closed before he came again to town—The witness did not attend the courts in the beginning of the poll, but was attending the freeholders constantly—He did not recollect any irregularities from the twenty-ninth of May, to the fifth of June ; but there might have been some unknown to him—he did not recollect hearing of any complaints of irregularity before the fifth of June, and he should not have recollected those he has mentioned, had he not taken memorandums, and did not

not know but that there might have been many who intended to poll for Mr. Mathew and Mr. Toler, but believes there might, who left town unpollled—He understood that pollers towards the close of the poll, were of no service to Mr. Toler, unless they gave him single votes, and believed many left town who would have voted for Mr. Toler singly—He knew Sir William Osborne, and that he wished Mr. Toler every success—he knew Mr. Carden, and believed they might both have polled pending the election, but others must have been left out on Mr. Toler's list—There were not any persons who offered to poll on the last day for Mr. Toler, who were rejected by the sheriff, but every one who offered, having a right, was received—There was not any house opened for Mr. Toler, in the town, for his friends, to the knowledge of the witness, and if there had, he must have known it.

Here the counsel for the petitioners again rested their evidence.

And it was agreed, that no further evidence should be given, in respect of disqualifications of voters by Mr. Toler, or re-establishing votes rejected, who offered to vote for Mr. Toler.

And

And the sitting Member's Counsel, (Mr. Kelly,) opened his Case.

There were three facts charged in the petition of the freeholders—the first material charge is *corruption*, which is said to rest upon the petitioner's evidence—The next fact is, that the petitioner had *a majority of legal voters*; and the third fact rests on *the misconduct of the officer who was deputy*. That gentleman is a man of great eminence in his profession, and of great property in his country—Mr. O'Brien was appointed deputy by the high sheriff, in the public court-house, before all the candidates, without any objection whatsoever being made—Mr. Toler in his petition only states, that he was agent before the election; but the freeholders petition asserts, that Mr. O'Brien was agent during the poll. On the second or third day of the poll, the deputy declared, from the interruption he met with; that he would proceed no further in taking the poll; it being impossible, from those very frequent instructions, for him to continue, but all the candidates intreated him to proceed and continue as deputy, which he did from their pressing and earnest requests, but specially declared, that he would do so only, provided they would pay a deference to the deputy, and this being promised, he continued to act—A man came to vote for Mr. Mathew, and was refused by the deputy, as having no vote; nor would the deputy receive him at a critical period, and that too, when matters were

were doubtful—Did that look like partiality?—Mr. John Toler, the candidate's brother, cried out with asseveration, at the close of the poll, that the deputy had acted fairly and *monstrously well*—Was it likely, that the candidate's brother, a lawyer, at such a period, would make such a declaration, if the deputy had misconducted himself. The number that had polled before the deputy was 319, and he rejected but fourteen only—four of whom had proposed to vote for Mr. Mathew, four for Mr. Prittie, and six for Mr. Toler. The deputy had eminent counsel to assist him during the time he sat, and made no determination without his advice, and coincided in the opinion of counsel on all points; besides, if the deputy had acted improperly, the statute empowered the sheriff to dismiss the deputy, and appoint a new one, at any part of the poll; and notwithstanding this power, there was no application to the sheriff, to remove the deputy, but on the contrary, he received the thanks of the parties, and continued the poll at their desire. As to the adjournments, evidence would be laid before the committee, that they were necessary on account of the Fethard election. As to the courts opening late, it would be strange, indeed, if a member were to be turned out, because the sheriff lay too long in the morning, with his new married wife.

The Poll Book of the late High Sheriff was then produced; as was the Poll Book of the Deputy.

Daniel Carroll, Esq; was produced to prove Declarations of Ledger, and the Impartiality of the Deputy.

A Wit-
ness.

The witness knew Robert Ledger, and had seen him often in the course of last summer—Early in summer, Ledger came to the witness's house, and told him, he, Ledger, had received a message from Mr. Biggs, the present high sheriff of Tipperary, by Mr. Bigg's brother-in-law, a Mr. Ledger, letting Ledger know, that Mr. Biggs would give him an ensigncy, and five hundred pounds, if he would prove bribery and corruption against Mr. Mathew, on the late election. That Robert answered the other Mr. Ledger, that it was out of his power—Ledger often came to the witness afterwards, and told him that similar offers had been made to him, by very respectable people, that the witness knew, and particularly mentioned Mr. Solomon Chambie, of Castletown, and Edward Ledger, of Ballyrickard—The witness saw Robert Ledger, the beginning of the month in which he was examined; had met him in the town of Burrows, on the second instant, when Ledger told the witness, that he had received a message on that day from Mr. Toler, the petitioner, desiring to meet him on that evening, and Ledger then told the witness that

that he would go, and as soon as he had done with Mr. Toler, he would return and tell the witness the conversation.—Ledger came to the witness's house on the morning of the fifth of the then November, (thirteen days before the witness was examined,) and told the witness that he had rode with Mr. Toler to the fair of Toome, and that on their way to the fair, Mr. Toler had told Ledger, that Mr. Fitzpatrick was to be high sheriff for the ensuing year—That he, Mr. Toler, had the appointment of the sub-sheriff, and that if Ledger did as Mr. Toler's friends had directed him to do, he, Ledger, should be the sub-sheriff; and further, told the witness, that he had the voluntary oaths of Chambie, and Ledger, that they would pay him eight hundred guineas in twenty-one days after the determination of this petition, provided he would prove bribery and corruption against Mr. Mathew; and also that he had been offered money on that morning to bear his expences, but would not take it, lest Mr. Toler or his friends should take advantage of it; as he was determined to tell the story he had told the witness, on the table before Mr. Toler's face, who had summoned him—Ledger then asked the witness to lend him a guinea to bear his expences, which the witness did—The witness was at the election of Clonmell, at the opening of the poll, and recollected an application made by Mr. Fitzgibbon, as counsel for Mr. Mathew, to the sheriff, requesting that he would come into court at nine o'clock on each day, but the sheriff answered,

that he would not be tied down to any particular hour, but would come in as conveniently as he could, or to that purpose—The witness was in the deputy's court for a good part of the election, and saw no reason to censure his conduct during his attendance, and heard no complaint made to the sheriff of the deputy's conduct; but Mr. O'Brien, (the deputy,) took umbrage at something that had happened, and insisted upon the witness's going along with him to the sheriff, for the purpose of stating, his, the deputy's dissatisfaction, and there was a good deal of altercation about it; but it was agreed at last by all the candidates, that Mr. O'Brien should resume the books, and go on with the poll; and he accordingly did so, at the request of every one of the candidates—Mr. Holmes paid some compliment to the deputy, and the witness did not know on what occasion; and the deputy said, he was happier and prouder of the compliment paid to him by Mr. Holmes, than what any other gentleman in court had said, or might say about him—Mr. Baker was a little jocular, and not a little troublesome during the poll—The deputy was assisted by counsel; and the witness did not hear, that the deputy's decisions differed from his counsel's opinion, but knew nothing that passed between them.

He was cross-examined by the Counsel.

There was no person present at the first time, when Ledger told him he was to have a commission—He recollected, that at the assizes of Clonmell, he recommended it to Ledger to go to Mr. Mathew, and repeat to him the conversation that had passed between the witness and Ledger, and his motive for it was that Mr. Mathew might make what enquiries he thought proper into it for his own benefit; and he believed, that he, the witness, wrote to Mr. Mathew, previous to that, informing him of such conversation—The witness had no great faith in what Ledger told him, it might have happened, but he could have no implicit faith in it—He knew two of the gentlemen, who were said to have made the offer, to be very opulent—Ledger told him the sum was not heavy upon those gentlemen, for it was collected by subscription—The witness was always Mr. Mathew's friend, and proud of that honour. Ledger shewed him a summons from the house for his attendance.—The witness told Mr. Ralph Smith, Mr. Toler's particular friend, the first conversation the very day it happened, and thought it necessary—The witness did not recollect, that he did remind Mr. Mathew, that he could be of service to him, by contradicting Ledger—His coming to town was partly to serve Mr. Mathew, who had written to him in general terms, but did not descend to particulars.

particulars. Mr. Toler did not, as he heard, make any objection to the deputy, and supposes he would, if he had thought he had acted improperly—The witness had attended as counsel for Mr. Mathew, and was at sometimes in the deputy's court; but knows not what was the offence given to the deputy; and the deputy did not tell him what was the offence; but only insisted upon his going along with him—He did not believe the deputy would receive an insult from any man, and that was the only time that he knows the deputy offered to resign—He believed Ledger had money in view, by informing him of those conversations—Ledger had been a clerk and runner, and did whatever he was desired on the election; but knew not whether he brought in voters, and knew of familiar intercourse between Ledger and O'Brien—The witness could not censure the deputy's conduct; and did not think that his conduct was censurable during the poll, and had no reason since to change his opinion*—He believed the deputy's counsel was Mr. Ryan, who was a freeholder, and polled for Mr. Mathew and Mr. Prittie. There had not been the smallest objection made to Mr. O'Brien, when he was appointed deputy—The witness did not think that Mr. O'Brien was concerned for Mr. Mathew, as his agent in law business; but believed, that consistent with his honour, would

* Both poll books inspected, and extracts taken there from, by the agents for the petitioners, for two hours, in the clerk's presence,

would serve Mr. Mathew. Mr. Ryan acted sometime as counsel for the sheriff, but on the two first days, Mr. Tydd was his counsel; and when Mr. Tydd returned from Maryborough election, he continued to act as sheriff's counsel—He believed that the parties agreed, that Mr. Tydd should be the counsel, and heard so; but Mr. Tydd was not a freeholder—The witness did not observe any house in Clonmell with an inscription, that entertainment was to be had there for Mr. Mathew's friends, by John Lidwell, Esq.

*Miles Burke, Esq; was produced to contradict
Dudley's Evidence.*

The witness attended last election of Tipperary for ten days, and met Ferdo Dudley there for the first time, on the third day of the election, in the evening, who being acquainted, the witness entered into conversation, and asked the witness whether he had voted, and being answered not, Dudley asked to whom the witness meant to give his vote, and was answered to Mr. Mathew—The witness then asked Dudley, whether he had voted, or for whom he would vote, and Dudley said he was not then determined; and that he had, at great expence, made four or five votes in his family, which he was determined not to part with for nothing—The witness having mentioned this discourse to Mr. Mathew, on the next morning, and told him that he, the witness, was afraid Mr. Mathew would be bribed out of his election, the witness met
Dudley

Another
Witness.

Dudley afterwards, and told him that he was speaking to Mr. Mathew about this affair; and that Mr. Mathew told him, that if Dudley would serve him on this occasion, he would be always his friend; but that Mr. Mathew had made it a rule to himself, that he would neither give nor promise a shilling during the election; but the witness said, that Mr. Mathew being a man of power and opulence, had it more in his power to be his friend than any one else—Dudley answered, “Adad, I’ll not be bit by promises, for Sir Thomas Maud served me so before;” and said further, that Sir Thomas Maud had promised to get him (Dudley) a place in the revenue—Dudley did not mention any thing particular, but stretched out his hand and striking it with the other, said “*nothing will do but this.*” The witness conversed with Dudley two or three times afterwards, but nothing material occurred in the conversation—Dudley said that one Mr. Lidwell had offered him something, but that he would not depend upon his offers—Mr. Lidwell however afterwards, told the witness that he had seen Dudley since he came to town—The witness sat mostly in the deputy’s court—He remembered to be in the sheriff’s court, when the deputy came down; but had not been in the deputy’s court that morning; the deputy seemed to be in a passion, and told the sheriff that he came to resign the books to him; and declared, that he would sit no longer as deputy. There were many applications made by many of the gentlemen

gentlemen concerned, to the deputy, to reassume his office; and Mr. Holmes in particular, made the deputy a very polite compliment, and said that he had acted with impartiality and integrity, and requested that he would continue to act in taking the poll. Mr. Holmes sat in the deputy's court, to represent Mr. Prittie, and counsellor Toler, the brother to the petitioner, sat to represent Mr. Toler—Counsellor Toler attended pretty constantly, and was scarcely ever out of the deputy's court whilst the witness was there. Mr. Toler had seldom less than five counsel, and sometimes more, attending in the deputy's court. The witness was in the sheriff's court at the opening of the poll, and there was not the least objection to the appointment of Mr. O'Brien as deputy, by any of the candidates—The witness observed Mr. Baker at the election, and knew that he acted for Mr. Toler; and the witness did not think his conduct was that of a man, who wished to expedite the election; and was present when Mr. Fitzgibbon complained to the sheriff five or six times of the noise and impropriety of Baker in protracting the election—He knew James M'Quitchin, and John Casey, who both polled; as also William Casey, and Joseph Jaques, who also polled—they all polled for Mr. Toler and Mr. Prittie—He knew the pieces of ground or farm, out of which they all polled; about twenty acres near Newport—The witness lived in Newport, and their freehold was within half a mile of that town—They were joint tenants,

K

nants, all in one lease; and they had shewed him a lease in which they were all included—The witness knew, and was present when they came to his house and sent for Mr. Mathew, and promised him their votes at the next election—The farm is called Paddock.

The witness was then questioned, concerning a conversation with a freeholder, tending to shew that he was from his own admission, under undue influence, and that his vote ought to be struck off. But no evidence having been given that he was objected to below, or that notice was given to him that his vote would be questioned before the committee.

The committee room was cleared, and on its being opened, the following resolution was communicated,

“ That the committee is of opinion, that the
“ counsel for sitting members be informed, that
“ at this time it is not proper to go into that
“ evidence.”

The Question was then waived, and Mr. Burke was cross-examined by the Counsel for the sitting Member.

There was no person present at the conversation, when Dudley struck his palm; but the witness saw Mr. Lidwell about fourteen yards distance from them; but does not recollect any other

other person—The witness was not in Dublin when Dudley was examined—Heard a little of what Dudley had sworn, but not above four words of it, and that was, “ That he was offered a place in the revenue, or forty pounds a year, until he should be provided for”—He was told those words by Michael Carrol, and no more, and that was since he came to town—Carrol was a gentleman living in Roscrea, and a freeholder—The witness had a letter from Sir Skeffington Smith, informing him that Mr. Mathew desired him to come to town as soon as he received it—Dudley and the witness are second or third cousins—Dudley had four or five freeholders at the time of this conversation—No person spoke to him while the room was cleared, except one to know, whether the evidence he gave to the committee would be serviceable to one side or the other—Mr. O’Brien did not apply to him as to the evidence ; but Mr. O’Brien did speak to him upon another subject ; and being desired to relate that conversation, it was objected to by the sitting members—but the committee counsel, after the room was open, permitted him to be examined, as to that conversation.

Mr. O’Brien did not give the witness directions how to proceed in any particular manner in giving his evidence, nor did he tell him he might have gone further in his evidence. There were some people present when Mr. Carrol told him

what Dudley swore, but did not recollect who they were—He never promised to insure Dudley forty pounds a year, nor ever thought of doing it—He had heard that Mr. Lidwell had a house in Tipperary for his own freeholders; but was never in it, and is not a freeholder of Lidwell's. The witness heard there was an inscription over a house, but never saw it—Mr. Lidwell paid for his own freeholders at his own expence, and was a friend of Mr. Mathew's—Had known Dudley thirty years, but knows but little of *him* for these last twenty years—he had been a trooper, and the witness had heard him impeached, exclusive of this particular—The witness had heard that Dudley was detected in stealing turkeys—The witness kept a tan-yard, and lived under Robert Waller, Esq; and held forty or fifty acres, but that was not all his property—He, and the freeholders with him, always paid their own reckoning at the tavern—He did not recollect who it was that put the question to him; when out of the room, he answered in order to get rid of his teasing, and told him he did not know whether it were of use or not.

Mr. John Smith was produced to prove that there was no Time appointed for opening the Poll.

Another
Witness.

The witness attended last election in the sheriff's court only, he was there from the beginning to the close of the poll every day—He was sure he was there at the opening of the court the first

first day, and did not recollect, that the sheriff said, he would open the court at any particular hour, and believed, if any such declaration had been made, he should have heard it, for he sat immediately under the sheriff—He did not hear any objection made to the deputy on the day the poll was opened—he meant at the time of the opening the poll, nor did he recollect to have heard any complaint made to the sheriff of the deputy, by any of the candidates during the poll—There was a complaint made one day, of the deputy not sitting early enough on that day, but whether it was made by any of the candidates, he could not say, or whether it was made to the sheriff—He remembered very well, that the deputy came down one day with his books, and declared he would not continue to act any longer, and the sheriff requested he would go back, and after some words passing on that occasion, he was directed to go back, and continue the poll—The complaint made of the deputy, was a general charge against him, for not sitting early enough, but the candidates, to the best of the witness's recollection, were unanimous, in desiring that the deputy should go back, and continue the poll—He recollected the first Monday of the poll very well; the sheriff did not come into town before twelve or one on a Monday, but which of the Mondays of the poll, he could not tell.—The day the sheriff came in late, he sat late—In the first week the sheriff sat until four, sometimes

times until five, and sometimes until after five o'clock. The witness took the poll for Mr. Mathew in the sheriff's court—Mr. Mathew polled something above three hundred single votes, but the witness never counted them; and the sheriff never precluded any counsel or freeholder from an examination, in respect of the right of voting—The witness did not remember whether the sheriff received the thanks of the candidates, but if he did, it must have been at the close of the poll—He knew Mr. Baker, and in the witness's opinion, Mr. Baker protracted the election, and towards the conclusion of the poll, he called particular names, but no one answered, and Mr. Toler's voters seemed to be exhausted, or very near being exhausted—He remembered that the sheriff said on the morning of the last day of the poll, that he would sit as late as they pleased that day, but that he would close the poll on that day—The witness believed that this declaration was made before all the candidates, and in open court—He did not remember any objection made at that time, by any of the candidates, to that declaration of the sheriff—The proclamation was rather late—it was made about five o'clock, and it was past seven before they got out of court—There were not many freeholders who tendered their voices after the first proclamation, and after it Mr. Toler declined to call—There was a period of about two hours, between the first proclamation and the closing of the books, and Mr.

Toler

Toler did not call one voter after Baker—Mr. Mathew polled five, and Mr. Prittie three after ; and then Mr. Toler declined—The witness was not certain whether Mr. Carding was or was not called, but he did not appear, nor did any one after Baker—About an hour intervened between Baker's polling, and the close of the books.

He was examined by the Counsel for the Petitioner.

Knew nothing of the return of the writ—The sheriff might have made a declaration of opening the court without his hearing it, and there might have been an agreement between the candidates for that purpose—Believes that the sheriff must have heard the complaint made against the deputy, of his not sitting early enough on one particular day—It was the same day, that the deputy said he would not continue to act, and believed the deputy went back in consequence of directions received from the sheriff's court—Remembered an enquiry made for the deputy, and the report in court was, that he could not be found, and believes, that was on the very day on which he offered to resign his books, and did not doubt but he heard he had been sent for—The witness knew some voters out of Loughnafulla, and Ra-coona, but could not say, that these freeholders were more averse to answering the questions put to them, than others of Mr. Toler's, but they were very averse—He believed a question was
put

put to some of those men, who their tenants were, which they refused to answer; and objections were made to all of the Loughnafulla voters—he shewed an objection was made for want of freehold to No. 705, in his book, and he was sworn, but he could find no objection made to him in the sheriff's book—The witness believed the time Mr. Toler's freeholders were exhausted, was an hour and a half later than the poll continued, on any preceding day—Mr. Toler on the eleventh of June, had polled fifty-five on his own call, and several on Mr. Prittie's call—he polled one hundred and three on all the calls, and believed it to be a greater number than he polled on any preceding days—The witness could not say, whether Mr. Toler had heard the sheriff's declaration on the morning of the last day, but believed towards evening, the sheriff might have been required to continue the poll next day, and believed that request was made about the usual hour of adjourning the poll on the preceding days, and believed Mr. Toler himself made that request—He knew Sir William Osborne, Mr. Carding and Major Thomas Pepper, and believed none of them polled in either of the courts—The evening of the last day's poll was very wet—He knew Clement Sadler, tanner, but could not say whether he polled or not—He believed most of Mr. Mathew's tenants voted for Mr. Mathew singly, or for him and Sir Skeffington Smith—Three of Mr. Prittie's last call voted for Mr. Toler,

ler, and one of Mr. Mathew's call after Baker had voted; there was not more than a quarter of an hour or twenty minutes between the last that polled for Mr. Toler, and the close of the poll—He believed Mr. Toler would have produced Sir William Osborne and Mr. Carding, on the next day, if the poll had been continued—He saw Sir William Osborne and Mr. Carding, for a great part of the last day, and saw them several days before, and verily believed that Mr. Mathew would have polled more on the next day than Mr. Toler, if the poll had been continued, and had heard so since—Sir William Osborne might certainly have polled had he desired it; and believed he saw Carding in the gallery, on the last day; and believed that every freeholder might have polled, had they thought proper; and heard in general, that several people who wished well for Mr. Mathew, intended to poll for him on the next day—The witness took the election poll in the year 1768, and did not remember any preliminaries on that election, for he was not present at the opening of that poll—He never was present at the settling of preliminaries—The witness did not remember that the sheriff on the day preceding the last day's poll, gave any intimation of his intention to close the poll on the following day—He believed Mr. Toler considered the adjournment of the poll would be advantageous to him, when he applied to the sheriff for that purpose, but there was a general wish that the poll

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might

might be closed on that day ; and the witness desired the sheriff “ for God’s sake to close the poll that day ”—and really would have desired closing for his own convenience, as he well knew, from Mr. Mathew’s majority on the poll, and his acquaintance with the county, that he could not be out-pollled. He believed there were eighty tenants of Mr. Prittie’s, who all voted for him, one half of whom gave their second voices for Mr. Mathew, and the other half for Mr. Toler, and neither Mr. Prittie nor Mr. Toler were benefited by Mr. Mathew’s votes ; as the majority of Mr. Mathew’s tenants in general, voted for him singly, or for him and Sir Skeffington Smith—Some of them might have voted for Mr. Prittie. Some of Mr. Prittie’s tenants did not vote, or if they did, not as his tenants—He is satisfied there was time enough for all the freeholders to poll, but that there was a good deal of time misspent, which if properly applied, the remainder of the freeholders might have polled. The morning of the last day’s poll was hazy, and, as the witness believed, there was some rain, but the wetness of the day, as the witness thought, did not prevent any one of coming to town—He heard that Mr. Lidwell had a house of entertainment in Clonmell, but never heard of the bond until yesterday, from the witness Mr. Burke—He believed from the sheriff’s declaration in the morning of the last day’s poll, it might be generally known, that the sheriff intended to close on that day—The
witness

witness conceived that the sheriff could not proceed after the return of the writ—Several objections were made on both sides, and cool, proper applications were made to the sheriff by Mr. Toler, and the other candidates, to take them down; and did not recollect a refusal to take them down—but upon looking into the sheriff's books, the witness saw that but very few were taken down, and therefore in general, he believed those applications were not complied with.

Here the petition of Mr. Toler was read, and the last witness delivered in, and authenticated the poll book which he took on the election.

And on being examined as to an alteration in No. 201, he answered, that Sir Skeffington Smith had polled so many extraordinary, on account of having missed so many the day before in the deputy's court, and in lieu of them—He did not remember a like application for Mr. Toler; but if there had, he believed he would not have made the like observation, because he did not take down any particular observation, and took that down only to account for Sir Skeffington Smith's voting six extraordinary. It happened on the first day of June, and was the last poll on that day—He did not recollect a like application for Mr. Prittie; they claimed an arrear of six, but that arrear could not have been on account of Sir Skeffington Smith's not being declared on the

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day Sir Skeffington Smith was a candidate, on the thirtieth of May; at that time when Sir Skeffington Smith had finished his five, Mr. Toler had one hundred and forty-eight, Mr. Mathew one hundred and forty-six, and Mr. Toler had therefore a majority of two; and believed the sheriff was about closing the poll for that day, which was a Saturday—There might have been objections made to this, but the witness had no note of it, and this mode of polling gave Mr. Mathew a majority of four against Mr. Toler.

John Tydd, Esq; was produced by the Sitting Member, to prove the Impartiality of the Sheriff.

Another
Witness,

Had been counsel at the last election for Tipperary, for the sheriff, with the approbation of all the candidates, as he understood—For the two first days of the election the witness was concerned in an election of his own, and was indulged in absence—He returned on the third day, and continued for the remainder of the poll. The sheriff always consulted him on every matter which he imagined to be a point of law, and generally on every thing, but more particularly on matters where he could not depend on himself, and ruled according to the witness's determination—He did not remember that the sheriff determined contrary to his advice, when consulted, but in one instance, a person was produced on the table, and a clerk of Mr. Toler's whispered him in the hearing of the sheriff, who with some indignation

dignation rejected him, for seeing him prompted—but the witness would not have advised such a rejection if he had been applied to—He had good reason to apprehend that the sheriff intended to act impartially, and considered that he pursued those intentions, and that he acted during the whole poll impartially between the candidates—The first day he came there, one, two, or three votes of Mr. Mathew's were rejected—the sheriff sent for the witness in the evening, to his lodgings, and told him that he understood there were some murmurs respecting his conduct, in refusing those voters, but that let his private feelings to Mr. Mathew, be what they might, his honour and character he considered as at stake in the office in which he presided, and that impartiality should be his line of conduct—He then asked the witness particularly with respect to those points of law on which those votes were rejected, and the witness gave him his reasons why they should be rejected, and gave similar reasons in the Queen's county—The sheriff seemed perfectly satisfied at what he had done, and declared, he would be very little anxious about the murmurs of the people, and would follow the witness's directions—The witness is related to Mr. Toler, and was at the election on the last day of the poll—It was on that morning pretty well understood, that both parties were very near out, and that the sheriff intended to close the poll on that day, and that it was done in the usual manner, where people do not mean to favour

vour any particular party—The usual proclamations were made, and the usual time between each of them, and the sheriff was constantly ready to receive the votes of any who should appear—The witness remembered to have seen Mr. Baker, and was much entertained by him; he was a gentleman of much humour; the witness believed he called out particular names, that he did not expect to answer, and understood that Mr. Toler was exhausted at the close of the poll—When the witness came on the third day, he considered Mr. Smith as sheriff's clerk, and did so for some time, and found that for some time he took down regular objections, but afterwards learned that he was not sheriff's clerk; he was then puzzled how to act, and then he determined not to attend to the sheriff's clerk taking down the objections, and did not consider it as material for the sheriff to take them down, as the candidates had their clerks; and the sheriff not taking down the objections, was entirely owing to his advice; but the witness paid more attention to Mr. Smith's book than to any other—He remembered no application to the sheriff to enter objections, but if there were, the witness's answer would have been, for their clerks to enter them themselves. The witness's discovery of a mistake of the clerk was made on the third day of the election—The sheriff did not consult him on the return of the writ—The witness knew that there is a clause, compelling the sheriff to lodge his books with the clerk of the peace, and would have given him

him his advice to have lodged them, and would have thought himself deficient in not doing so—He believed the sheriff would have lodged the books had he been advised, and believed the sheriff was ignorant of the necessity of lodging them, or that he would not incur the penalty imposed by the act—The witness would always recommend it, and it was generally considered the sheriff ought to take down objections—The witness did not attend to the sheriff's book, but where they were rejected in general, for want of registry—He believed it was mentioned to the candidates for their clerks to be careful in taking down objections, and the witness looked over Mr. Smith's book, that the sheriff might resort to it, and might when authenticated, be some justification to him, as his best evidence. He believed Mr. Toler might have been injured, by being obliged to have recourse to Mr. Mathew's clerks book—The witness could not view Mr. Toler's book from where he sat—He saw Mr. Smith very regular in taking the poll, but observed that the sheriff's clerk had omitted taking objections on the preceding days—Mr. Ryan supplied the witness's place in the sheriff's court during his absence, and he found Mr. Ryan in the sheriff's court on his return.

Mr. Evans delivered in his poll book, and authenticated the same to the first of June; and Mr. Concanen delivered in his poll book, and he and
Pitman

Pitman authenticated the same from the first of June, to the last day of the election.

Mr. John Aikin was produced on behalf of the sitting Member, to prove he remembered the Day Mile Burke was examined before the Committee.

Another
Witness.

He saw Burke in the interval when the room was cleared, and before he had been again called in, heard him in conversation with Mr. O'Brien—was near to him, and accidentally heard the conversation, but not the beginning of it.—“Indeed Mr. Burke” said Mr. O'Brien, “I think you might have gone a little further in your evidence.” To which Mr. Burke replied, “how could I, when I was not asked the question.” When the witness heard this conversation, he told it to Mr. Hudson—There was no person speaking to Burke at that time but O'Brien, and the witness did not believe that there was any thing criminal in the conversation, until he heard Burke deny it when he was examined afterwards to that point.

The room was then cleared, and on the parties, their agents, and counsel being called in, they were informed, that it was not necessary for them to go into that part of the case which related to the numbers on the poll, but attend to that only which tends to vacate the election on the other parts respecting bribery and corruption.

And

And here the evidence was summed up by Mr. M'Cartney, as counsel for the petitioner.

The petition in which this case had been laid before the committee, complained of improper conduct in the sheriff, and misconduct of the deputy—and also of bribery and corruption—The complicated transaction relative to the bond, was the first thing to be considered by the committee—The next was, a charge in one of the petitions of an endeavour to bribe—As to the transaction of the bond, Mr Oliver was the first to prove that fact, and he said that he was directed to hand a bond to Mr. Mathew by Mr. Prittie; and that there was a bond previous to the election, for a considerable sum, executed by Mr. Mathew to Mr. Prittie; and that a very near friend of Mr. Prittie's asked Mr. Oliver his opinion of that bond; and that he, Mr. Oliver, answered, if it were his case, he would give it up in the genteelest manner to Mr. Mathew—The condition of that bond was to give his voices at the election—Mr. Mathew was doubtful, whether he should take the bond or not; and disclaimed any favour, but accepted it, with a proviso that he should consult his friends how he should act—There was a private confidential conversation between Mr. Oliver and Mr. Mathew concerning that bond: that conversation was not before the committee—if it were known it might have great weight—Mr. Mathew had an opportunity of disclosing it; Why did he not?

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There was a meeting at Kilkenny, and it took two days to settle the differences: if that meeting were only to consider whether that bond were due or not, it might easily be done; but it was to settle the terms of the election; and three days were taken up and nothing done—There were many schemes relative to giving or withholding votes on the ensuing election; and Mr. Mathew's friends urged an agreement, relative to votes on a future election. This bond was traced to Mr. Mathew, and was at the present time in his hands: if it were produced it might be demonstrative of that transaction; but there was parole evidence sufficient—It was agreed, that what was admitted by Mr. Mathew's friends, should be taken as his admissions, and their acts as his; that Mr. Mathew's friends changed a certain number of votes from Mr. Prittie for Mr. Mathew; not as a favour, but a demand as a right, and mentioned it to be in consequence of an agreement—Mr. Mathew on first interview said himself, that this bond had some weight—If the bond had not been executed, Mr. Prittie would not have handed over his second voices, and the thing being mentioned, Mr. Oliver said that he did not believe Mr. Mathew would have asked for Mr. Prittie's second voices, if the bond had not been executed—There would have been no division of voices if there had not been the meeting at Kilkenny, and the voters most probably, if left to themselves, would have voted for Mr. Toler instead of Mr. Mathew—Mr. Mathew had
given

given no testimony as to the bond, and it lay upon him to do it. The bond had been executed on the close of the former election, for a particular purpose—It was impossible that it was for the purpose of the former election, as it was executed at the close of it—Mr. Mathew said he looked upon Mr. Prittie to be under some engagement to give him half, if not all his second voices—It appears from Mr. Holmes's evidence, that Mr. Mathew was ready to discharge the contents of a bond—The bond had been executed, the money tendered, and Mr. Prittie's interest asked in consequence; and it appeared to Mr. Holmes, that some idea of a supposed agreement existed, and that it was that Mr. Prittie should serve Mr. Mathew on the ensuing election. And the question now was, whether the advantage gained from thence, ought to vacate the election or not?—At the eve of the election, in consequence of the former meetings, an agreement was made between Mr. Mathew and Mr. Prittie's friends, that half of Mr. Prittie's voices should be given up to Mr. Mathew—Ought not the consequence of that agreement to be deemed as bribery? When a man is bound to do an act, whereby he receives benefit, and acts according to it, it is bribery—Now, the agreement was proved upon Mr. Mathew, and it becomes his part to disclose that transaction. Mr. Oliver and Mr. O'Callaghan, were the gentlemen who brought this agreement about; and Mr. Mathew received a great advantage, and gave as a

consideration a bond for one thousand pounds.—The confidential friend of Mr. Mathew was present at these meetings, but he was not called, to prevent his cross examination: the thing was too glaring to admit of a doubt; Mr. O'Callaghan knew more than any one else, as being the confidential friend of Mr. Mathew. The reason why Mr. Prittie would not accept the money when first tendered, was because he would look upon it as an acknowledgement or confirmation of that agreement; but Mr. Mathew considered the payment of the money necessary for fulfilling his part of the agreement, and the offer was certainly equal to the payment, for the tender of the money was binding Mr. Prittie, to the performance on his part, and the tempter and tempted are both equally criminal—The explanation of this fact came out on examination of the committee—Mr. Prittie did not consider the bond as his private property—The witnesses who disclosed the transaction, believed that if Mr. Prittie had received the money, it would have been an acknowledgement of the agreement; and it also appeared that more of Mr. Prittie's tenants would have voted for Mr. Toler than Mr. Mathew, had they been left to themselves; and it also appeared that if no claim had been made, Mr. Prittie would have stood neuter. Mr. Mathew receives an advantage—Mr. Toler is prejudiced, and Mr. Prittie acquires no benefit. It appeared from Mr. Smith's evidence, that all Mr. Mathew's tenants voted singly for himself,

himself, and some few for Sir Skeffington Smith. Mr Macnamara admitted the bond to be for one thousand pounds, and that he had offered to pay the same to Mr. Prittie, whose friendship was expected by Mr. Mathew. The bond had been long executed, but was not applied for, nor any tender made on account of it until the canvas. A claim of neutrality was made on the same day of the tender—All these circumstances were to be weighed—The whole was a dark transaction.—The probable consideration of the bond was to purchase a borough; and at any rate it was a corrupt agreement, and to be taken against Mr. Mathew—There were three questions in this cause. First, whether Mr. Mathew was not disqualified, next whether Mr. Toler had not a majority, and third, whether they ought not to go to a new election. It appeared from Ledger, that the deputy had been partial to Mr. Mathew, giving directions respecting votes, and when none were ready, by private applications adjourning the poll—It appeared that the friends of Mr. Mathew got six guineas paid from Mr. Mathew for the purpose of bringing votes.—There were complaints made of the adjournments by Mr. Toler—Mr. Evans also said that the hours agreed on were from ten to four; and that he saw Ledger often whisper the deputy, and he fortified Ledger's evidence as to the adjournments in consequence—When the sheriff made those different early adjournments, he was requested by Mr. Toler's friends to continue.—

The

The act of parliament requires the sheriff to continue the poll from day to day at regular hours, until all the freeholders in the county are polled. The freeholders were injured by this manner of conducting the poll, and some of them in consequence of it, deserted Mr. Toler. Mr. Sadler came often to poll for Mr. Toler—The poll was not closed till eight the last day of the election, and more polled that day than on any other, and consequently the poll ought to have been kept open, as the sheriff was told that there were many more to poll—The sheriff made no application to his counsel for advice, whether he should close the poll or not—It appeared that some had been prevented from polling, though not many specified—The sheriff is sworn to return according to the majority of legal freeholders; and it was declared to him, that there were more to poll; but he did not examine whether that was the fact or not—The return of the writ was set up as an excuse for closing the poll—But the truth was, the sheriff closed the poll, because there were freeholders to poll against his friend—In the morning of the election the deputy was seen soliciting votes for Mr. Mathew, and called voices in open court to poll for Mr. Mathew, and the different adjournments were made to answer Mr. Mathew's purposes; and although Mr. Mathew's counsel gave up in one instance a freeholder, yet the deputy polled him. Mr. Lidwell, through friendship and hospitality, opened a house for Mr. Mathew, with a
board

board with an inscription, purporting entertainment for Mr. Mathew's friends, by John Lidwell, Esq.—The deputy was desirous to resign, as being interrupted, but Evans swore there was no interruption in that court; and Mr. Carrol did not know what that insult was, and it was mentioned only as a pretext—Edward Pitman mentioned the irregular adjournments, and that the people of Loughnafulla would not answer the questions put to them; that also on Saturday, the sheriff very early refused to proceed on the poll, because he was to go twenty miles to dinner, and had been lately married; yet, notwithstanding this excuse, he did not leave town until six o'clock in the evening. This adjournment was contrary to the advice and intreaty of Mr. Holmes. One man polled out of a lease for years. All Loughnafulla was suffered to poll, though not one in possession—Dudley informed the committee of the proposal made by Mr. Lidwell to him, with the promise of an employment, if he voted for Mr. Mathew, and Mr. Lidwell was a very active agent for Mr. Mathew—that Burke was present at this offer, and proposed to secure forty pounds per ann. on his own land, until Lidwell's promise should be performed—Dudley was certain Lidwell made the proposal, and was sure he would not deny it—Mr. Lidwell might have contradicted Dudley, and ought to have been confronted to him; why was he not? Mr. Lidwell would not swear a falsehood—Here then was a chasm in the evidence of Mr. Mathew.

thew. Mr. Baker, the next witness, mentioned the casting of lots and other preliminaries.—Notwithstanding this, there was no regular time of meeting or adjourning—On the tenth the poll began at ten and adjourned at two—When the deputy called out, “are there any freeholders for Mr. Mathew?” and being answered in the negative, he adjourned the poll, though many attended for Mr. Toler, who lost some of those voters, who would not then be received by that means. Mr. Carroll was produced to discredit Ledger; and it seemed, Ledger was so poor, that he borrowed a guinea from Mr. Carroll, to bring him to town; but there was no person present at the conversation—Ledger himself declared the offers which they set up to discredit him, but he gave his reason, that he was humbugging Mr. Carroll—Mr. Burke was produced not only to discredit Dudley, but also to exculpate himself of a crime he might have been prosecuted for—Mr. Lidwell was the proper person to be examined, but Burke was substituted, he however confirmed Dudley’s evidence respecting the offer; for he stated, that Dudley mentioned to him, that he had offers from Lidwell—No person was present when Dudley scratched his head, and had only heard three or four words of what Dudley said; but this Mr. Burke who was to contradict Dudley, has discredited himself; he swore that he had no conversation with O’Brien, which was flatly contradicted by Aikin—Mr. Lidwell’s silence is a confirmation of the offer—Mr. Smith did

did not positively swear nor recollect, that the other said he would open the court at any particular hour, but he might have said so, notwithstanding; nor did he hear any objection to the deputy; but admitted there was complaints and murmurings that the deputy did not sit long enough—Upon Smith's books the sheriff relied—Smith admitted that O'Brien came into court upon a complaint, and offered to resign; but that all the candidates joined to make him return—The sheriff did not receive the thanks of the candidates. Why? Because he acted basely and corruptly. The conduct of the sheriff was not taken notice of in the poll book. There was a quarter of an hour between the proclamations, and Mr. Toler could have polled more voters next day, but the sheriff did not declare on the night before the close of the poll, that he would next day close the poll, but he did it by surprise on the morning of the last day; if the sheriff's excuse was really that the writ was out, he should have mentioned it, but for the service of his friend he concealed it. An application was made to the sheriff to take down objections, but it was not done. On one Saturday Mr. Toler had a majority of two at the hour of closing, and on application for one candidate not having his turn before, this was an advantage for Mr. Mathew to have a majority on the close of the poll, particularly on a Saturday, and six more polled—Mr. Tydd did not attend the poll until the third day—The sheriff generally ruled according to

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his directions, except in one instance, where with indignation he refused a vote for Mr. Toler, when the voter was whispered, by Mr. Toler's agent, but he admitted him for Mr. Mathew. It was understood, that all the candidates were out of votes on the morning of the last day, though they polled more that day than upon any other. There were no objections taken by the sheriff from the beginning to the end of the poll—The sheriff had a right to examine on oath, and the clerk of one of the parties was suffered to take objections, and that clerk was Mr. Mathew's poll-taker—Why was not the same measure dealt to Mr. Toler? Why was not one of his clerks appointed as well as Mr. Mathew's? The objection is—it never was intimated to Mr. Toler, that his friend Smith's book was to be the government of all—And this marks the sheriff and the whole of the transaction—The rest of the poll books were not compared with Mr. Smith's; and the very poll books of the sheriff have the name of Mr. Mathew upon them. At all elections, the parties always endeavour to compare their books with the sheriff's—The sheriff's counsel thought it wrong, that the objections which were taken were not entered in the sheriff's poll book—they were not, and this should have been made public when discovered; but all passed in silence, and the sheriff and his friend, Mr. Mathew, determined to abide by Smith's books, without acquainting the other candidates with it—This was the whole of the evidence, except that of Cox and

and Aikin, and Cox had proved, that Lidwell had opened a house, with an inscription for Mr. Mathew's friends, and Aikin proved the conversation between Burke and O'Brien, on Wednesday last—Of Mr. Burke it was remarkable, that he remembered a story of little importance, of twenty years ago, but could not recollect a conversation just before.

Mr. Kelly next summed up the evidence for the sitting member, and he stated, that the question was, whether the sitting member, by any act of his, had disabled himself from representing that county which he now is in for. It was admitted that he had a clear majority, and no man can disqualify himself when he has a legal majority. Wilkes's case was totally different, being disqualified by the house—The Resolutions of the English House of Commons, were uniform, that the petitioners must shew a clear majority—If all that had been stated against the sitting member were true, it would not disable him, but there was not any one allegation in the petition supported. The invariable rule of evidence in every indictment is, "that the person charging another with a fact, must give positive proof"—Belief, appearance, *insinuation*, were no evidence—facts—positive facts must be proved—Ideas were no evidence—But the belief of the petitioners may be proof for the sitting member. True, it is, that committees are not bound by the rules of other

Townsend
v. Low-
field.
3 Atk.
536.
1 Vesey,
35.

courts of law—but the rules of evidence are immutably the same, and the modes fixed by courts of law ought to be adopted in other courts. In a case determined by my Lord *Hardwick*, what does that great judge say, that though there appeared great circumstances of suspicion, yet he must determine *secundum allegata et probata*—No court ought to be governed by any private suspicions—Mr. Toler's petition does not charge the sitting member with bribery or corruption—The freeholders petition alone makes these charges, and that at a meeting at Kilkenny—The only allegation in Mr. Toler's petition was, that the deputy had been Mr. Mathew's agent, and the freeholders petition charges the deputy with being agent for Mr. Mathew during the election, but there was no charge to that effect—In Mr. Toler's petition, there was no charge against the sheriff's partiality, or as being under Mr. Mathew's influence in either petition; and ought such charges to have been made, if they wished him to be thought culpable.—The three gentlemen examined as to the bond, were Mr. Oliver, Mr. Holmes, and Mr. Macnamara; to incapacitate Mr. Mathew, evidence must have been, that Mr. Mathew bribed Mr. Prittie, to give him his interest on that election.—The bare offering of a bribe does not disqualify—The statute of 15 and 16 of Geo. 3. does not disqualify for the offering a bribe. There was an actual bribe given and received in the case quoted in 3 Burrows, which

Cap. 16.
Sect. 14,
15.
1235 and
Say. 289.

which was punishable by a criminal prosecution. --The other case of the *King* against *Vaughan*, was not at all in point. If a criminal offer appears, the house may punish, but cannot incapacitate--Before the late act, if a man had given money to prove his election, the house might have declared the election void, but the money given must be positively proved.--The committee would not upon light suspicion, lay a brand upon the character and honour of the sitting member. None of the three gentlemen who were produced as to the bond, have sworn that Mr. Mathew bribed Mr. Prittie, or that the bond was offered or intended as a bribe--No witness whatsoever had said so, and the committee could not decide by conjecture, relative to that circumstance, but on the contrary, they all agreed that it was not intended as a bribe, for they proved that Mr. Prittie was incapable of taking, and that Mr. Mathew was incapable of giving a bribe--That the bond had no relation to a future election--Suppose, then, that it had been given at the last election, even for election purposes, it could not effect this, and all the witnesses agree, that it had only to do with the election that was past. It ought not, therefore, to affect the sitting member, or his election. The act itself mentions a bribe hereafter to be given. Mr. Macnamara went to pay money to Mr. Prittie, but said that he had no directions at that time to make any claim on Mr. Prittie, relative to his interest.--

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There had been an election in 1768, and a junction took place between Mr. Prittie and Mr. Mathew—Sir Thomas Maude was a-head, and Mr. Mathew had a majority of Mr. Prittie, and seeing that Mr. Prittie must lose his election, and being at great expence, this bond was given, which is sent back long before any message or talk of the election; and that he might with honour take it, but on further advice refused it—Mr. Holmes said, that it was urged, that that bond was positive evidence of some supposed agreement—Mr. Mathew might wish to indemnify Mr. Prittie for the expences at the last election, and might hope thereby, to lay a foundation for his future interest, and Mr. Prittie was ready to continue his generous acts, as he and Mr. Mathew were still in great friendship, which had not broke off at that time—All the witnesses concurred in this, that there was no agreement at the time of the bond, and that Mr. Mathew had never mentioned that the bond ought to influence the election. Mr. Oliver did not rely on the bond, nor did he consider that it had any foundation in truth. True it is, at the meeting at Kilkenny, it was urged as a reason, that Mr. Prittie should give Mr. Mathew his interest, but that proposition was deserted by Mr. O'Callaghan, who was the only avowed friend of Mr. Mathew—Was Mr. Mathew to be thought incapable, because a gentleman said, it was a presumptive evidence of a supposed agreement?—But Mr. Sadler, on the contrary,

contrary, offered to swear that the bond had no reference to any future election—There was no evidence that Mr. Mathew gave the gentlemen who met at Kilkenny, any authority to meet, and it would have been inconsistent with his delicacy, to have treated. All conjectures relative to this agreement most completely differ; but in relating the conversations, they all agree that he did not bribe, and that the bond had nothing to do with the election; but these are circumstances which, it was said, ought to have weight against the sitting member, and it was said, that the meeting at Kilkenny, was for that purpose, and that has been said, though they all swore there was no such thing—Suppose this bond had been given at the last election, it could have no reference to the present—If Mr. Mathew's money were offered to Mr. Prittie, that would not invalidate Mr. Mathew's election, for Mr. Prittie refuses it, and does nothing in consequence of it—Mr. Mathew had not got the votes of Mr. Prittie by this means, for Mr. Holmes and Mr. Oliver swore, that the neutrality of Mr. Prittie was long determined before that, and there has been no charge that Mr. Prittie took a bribe, but it was proved, that Mr. Prittie could not be awed by fears, to give his votes—then by what undue influence could Mr. Mathew get them? Mr. Prittie's original plan, was to act a neutral part, and to stand single and unconnected—the mode of neutrality was not publickly adopted, until the

eve of the election; but it was of service to Mr. Prittie, as he got thereby the second voices, in many instances, both of Mr. Mathew and Mr. Toler—Mr. Holmes swore that the idea of neutrality was adopted, and set Mr. Prittie forward on the poll—Mr. Prittie received no money, made no agreement; his plan was adopted by the advice of his friends, and long settled, previous to its public adoption—Mr. Oliver and Mr. Holmes both swore, that it was in pursuance of an old original plan, that Mr. Prittie should divide his interest—Mr. Holmes swore, that if Mr. Prittie had not influenced his pollers, they would have been divided; but that as Mr. Toler lived on the spot he might have had more of them than Mr. Mathew—This was a most unlucky afterthought, and obliged the witnesses to reveal the secrets of their friends. The committee could not vote that Mr. Mathew had given a bribe without going farther; if they incline to any such opinion, they must also vote, that Mr. Prittie took it.—One thousand pounds only was the consideration of the bond!—how very trivial a sum must this appear, when it is remembered that the witnesses have sworn Mr. Prittie incapable of accepting a bribe—There was no instance proved of bribery in the lower class of people; that on which any stress is laid, went to a gentleman the head of the county, in question—Could any thing, but the heat of party, think of such a charge, on such men?—As to the conduct of the
sheriff

sheriff and his deputy, if every thing charged had been proved against the sheriff, yet it could not affect the sitting member—no one had said that the sheriff had acted partially during the poll, neither the candidates or freeholders have alledged it in their petitions, their charge is, that he protracted the poll—There was no charge of his being under Mr. Mathew's influence, nor was there any proof of it; it had been mentioned that the sheriff was partial, if it had been proved, the sheriff would then have been called upon before the committee, and might have proved his consequence, his character, his fortune, and his independence—But the sheriff's conduct, unless he be influenced by a candidate, cannot have any effect upon the election of the candidates; if it were otherwise, a sheriff, by his partiality, may have it in his power to ruin any candidate he pleases—There was no evidence that Mr. Mathew directed the sheriff's proceedings, or that the sheriff did any thing at his request, or spoke to him during the election—If there were no such thing, or if the sheriff from his own will acted wrong, that ought not to affect the sitting member; but there is no cause to find fault with the sheriff—He cannot adjourn but from day to day, and if it be corruption to sit late drinking, and not rising early in the next morning, the counsel himself admitted he might be corrupt. The election of Fethard was at the same time, and the adjournment was by the consent of the parties; but it was said, there was no evidence that it was

done by consent ; to this it may be answered, that most of the gentlemen of the county of Tipperary were interested, and concerned in the election of Fethard ; and there was no evidence that the adjournments had been objected to by any of the candidates—There were two particular times alluded to, and the hours of one or three were the earliest adjournments, and no objection was even made to either of those adjournments.—There had been three witnesses examined to give an account of the agreement at the commencement of the poll, and they all differ—Evans said, the sitting was to be from nine to four—Pitman, from ten to five; and Baker, from ten to four—It however appeared, that the sheriff was called upon by Mr. Fitzgibbon, on the first day of the election, and requested to come into court at nine o'clock ; for that the candidate for whom he was interested (the now sitting member) had no desire to protract the poll ; and that the sheriff replied, that he would attend as diligently as he could, but would fix no hour for his attendance. Another mighty charge is, that the sheriff on one day adjourned, and said he was to leave town, but he did not ; for he was seen there at six in the evening, when he went out of town, and rode twenty miles in a summer's evening—The petitioners dwelled upon trifles, because they knew they had nothing solid to support them—There were one thousand four hundred and seventy freeholders in the county, and the poll was

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concluded in so short a time as twelve polling days, though Mr. Baker and five lawyers, were in the deputy's court at that election, on one side—Is there any thing corrupt in the sheriff's going into court at ten, and adhering to that regularly, except upon two days—But suppose the sheriff had acted wrongly, is his crime, or his indolence, to affect the candidates? Certainly not.—The sheriff did not adjourn on any one day, until he had polled an equal number for each candidate, and did not give any advantage to the one, more than to the other—If the protraction were injurious, Mr. Mathew was more annoyed by the delay, as he had a majority of Mr. Toler—The sheriff's court hardly ever sat after three, seldom until four. There was no obligation on the sheriff to sit longer than six or seven hours, and it would be hard if there were; the charge then is too trivial to be looked into—There never was any election carried on with more propriety on the last day, than the election in dispute—A man was asked by the sheriff, who he polled for, he was whispered by a solicitor to poll for Prittie and Toler, and the sheriff rejected him, and was right, as the voter ought to come uninfluenced, and under the sheriff's protection, who ought to guard against undue influence.—The agent ought to have been punished, and the evidence of the man ought to have been discredited, if he were told by the solicitor what evidence he should give—The words were put into his mouth, and the sheriff refused; but could the

sheriff suppose, that a single voice could affect the election. The sheriff saw him tampered with before his face, and therefore rejected him, and rightly rejected him. It did not appear for whom he meant to poll—There was no evidence given that the sheriff did not give each counsel an equal opportunity of sifting votes—It was true, that Baker insinuated, that Mr. Mathew's five were polled faster than others, but Smith swore that all the candidates had equal privilege of scrutiny, and in questions, and he confronted Baker. Great stress was laid as to the last day, that the sheriff did not declare on the night before, that that day should be the last—But the sheriff gave no preference to either of the candidates—he did not tell Mr. Mathew of that intention, more than he told Mr. Toler—Mr. Lydd said, that all the candidates were nearly exhausted, and that the sheriff gave early notice in the morning, of that being the last day of polling, and no objection was made by any of the candidates, nor did Mr. Toler then make any application—On this last day Mr. Toler polled all he had to poll, and there was three proclamations regularly made, as was admitted by all parties—Mr. Toler made not the least objection to any of those proceedings, by his brother or any of his friends—By law no adjournment can be made after the first proclamation, for if the sheriff cause one to be made, he must make all, and there had been more than reasonable time between the first and last proclamation,

mation, there was a space of two hours ; when the first proclamation is made, so long as there is any one to poll, the second proclamation cannot be made, but when there was a stop of votes after a reasonable time, the second proclamation is made ; nor can the third be made while any one demands to poll, after the second, but the sheriff must continue the poll—Mr. Toler was exhausted before the third ; and the sheriff was not obliged to adjourn at Mr. Baker's request—In truth, the sheriff had it not in his power to do it. Mr. Smith admitted, that Mr. Toler requested the sheriff at about the usual time of adjourning, to adjourn ; but it was the general wish that the poll should close on that day ; and it appeared by Mr. Baker, that Mr. Mathew would have polled more upon the adjournment than Mr. Toler—Smith knew the county, and the candidates, and declared that Mr. Mathew would poll more than Mr. Toler, upon an adjournment. Three only are mentioned, who could have polled for Mr. Toler, in case of an adjournment, they were Sir William Osborne, Carding and Pepper ; these three could not avail Mr. Toler, and they might have been polled during the election ; but the sheriff had no power to grant Mr. Toler's request of adjourning—The writ was returnable on the eleventh of June, the very day on which the poll closed—The sheriff might make his return upon the first day of the election, for it did not appear by the record how long the poll lasted—

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1 Geo. 2.
cap. 9.
sect. 4.

There is a positive law on the sheriff to return his writ, and whether the sheriff is culpable for obeying the law, is now made a question. The sheriff was obliged to return the writ the day of the meeting of parliament; and there was no criminal intention in obeying the law, for Mr. Mathew, his supposed friend, gained no advantage by it; and obedience of the law could not be considered as an imputation on the sheriff's conduct—His proceedings had been every where regular—He had a gentleman of universally esteemed character and reputation, to advise him during the poll, by consent of all the candidates, and a relation of Mr. Toler's own, was his conducting counsel—The sheriff struck off one, two, or three of Mr. Mathew's voters, before his counsel came; and this was murmured against by Mr. Mathew, but not by Mr. Toler—When his counsel came, the sheriff told him, he meant to act impartially, and according to his own honour and character, and did not act at all contrary to his counsel's opinion—The sheriff had acted uncorruptly, and was vilified by an after-thought of three or four freeholders—The sheriff returned the member who had the majority on the poll—No charge that he was inticed to do so by Mr. Mathew, or on any private conference—It was but very lately indeed, that the sheriff had any intimation that his character would be called in question, if he had, he could produce the first men in the House of Commons, the first men in the

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the land, to support it—But every evidence had tended to prove his conduct exemplary, and disinterested, not leaning to the one side or to the other—It is complained, that the sheriff did not deliver his poll books within the usual time—for what purpose?—There had been five poll-takers on each side; they were masters of all the objections on both sides—The sheriff's counsel had forgotten to advise him to do so; and neither the petitioner, nor any of his friends, called upon him for that purpose—By the statute before referred to, “the sheriff must, on or before the day that parliament meets, return his writ, on pain of five hundred pounds,” but it has been said, there is nothing that prevented him from continuing the poll after the return, and that he had a right to do so, for the act in that case does not make the election void; but might not an angry candidate enforce the penalty?—Clearly, the sheriff could have no design in it—It is true, there was an application made by Mr. Baker, for an adjournment; but the committee heard, that Mr. Baker was a *merry gentleman*; but no *serious* application was made, nor would there be any use for it, as Mr. Toler could never come up with Mr. Mathew—It was said, that the deputy was agent for Mr. Mathew, this was *before* the election, by Baker's evidence, and there was no objection made to his appointment, which was in open court—The deputy was in Dublin at the canvass—Baker made no objection to his appointment

1 Geo. 2.
cap. 9.
sect. 4.

ment—All the candidates were present at it—There was no pretence made of partiality charged against him—there was no complaint made of him to the sheriff—the deputy had lawyers about him, he offered to resign—what could be his purpose, or for what use did he make this offer? It is said to be a pretence, but all the candidates, and the petitioner's brother required him to continue, as did Mr. Holmes also, who declared his approbation, and who regularly attended in the deputy's court—There were five hundred and nineteen polled before the deputy, and only six of Mr. Toler's voters rejected—four of Mr. Prittie's, and four of Mr. Mathew's—So that there were but two voices in five hundred and nineteen given to his supposed friend, by this conduct of the deputy—Mr. O'Brien was a man of great abilities in his profession, and incapable of being guilty of so flagrant a conduct—There was one man who had been rejected by the counsel, yet he was admitted by the deputy—This man had been asked, whether he could be particular as to the time of his taking the oaths—The act gives time to come in before the twenty-fourth of June, one thousand seven hundred and seventy eight, to take the oaths, and deem himself a good protestant, from the time the convert files his certificate—The deputy would have therefore acted wrong if he had refused this voter; no witness had ventured to swear, that the deputy had acted partially on the poll, and his character was not

11 and 12
Geo. 3.
cap. 19.
sect. 7.

to be taken away, because he leant to one side, and may vote himself for a candidate—The sheriff of Leitrim gave all his interest for two of the candidates, and did all he could to gain them friends—There was no crime in soliciting votes. There was no insinuation that he had got any money, had received any bribe, or was under any undue influence—He was bound to adjourn when the sheriff desired it ; and it was plain, the adjournments were no more to Mr. Mathew's advantage than they were Mr. Toler's—This attack was not well founded—It was to deprive Mr. Mathew of his honour, and his character ; and at the same time to affect Mr. Prittie's, for the one could not be impeached without the other—The fact had not been proved, and the sitting member therefore could not be found guilty only upon bare conjecture or surmise—Upon the principle and authority of the Shaftsbury election ^{2 Doug. case 149.}
—Lidwell was not proper to be examined, there being a charge of bribery against him.

Mr. *M'Cartney*.—The general question as it was stated by Mr. Kelly was, whether there should be a new election or not, but that question was divided into two, which are subordinate.—There ought to be a new election, on account of the bond—There ought to be a new election, on account of the misconduct of the deputy—The sheriff, deputy, and the sitting member, were all involved in the question—The same counsel

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were employed for all the three—Mr. Kelly's stating was contrary to the notes—He urged that the petitioners case ought to be determined *secundum allegata et probata*.—The rule of evidence is to give the best the nature of the case admits of, the best in the power of the party to give—If a deed be lost or mislaid, it is admitted to be proved by parole evidence—The bond was in Mr. Mathew's own hands—He could produce it—It was urged, that bribery was not charged in the original petition—The general allegation is sufficient to vacate the election—The committee are bound to proceed upon the petition now referred to them, and not on the original petition—The substance of the bond, the manner of the execution of it, and for what purpose, it is said, are not to be exposed, as they may prove bribery against Mr. Prittie; but he was not complained of. Mr. Mathew was the only person complained of, and he was the only person who had taken defence, and the charge was made directly against him—The question now was, whether he executed that bond, and what advantage he received in consequence of it—The common law, as well as the law of parliament, obliges the committee to go into examination of this illegal agreement—The witnesses of such fraud and corrupt agreement, were punishable by fine, and the act of 15 and 16 Geo. 3. which had been quoted, was only declaratory of the common law, and of which they might take advantage—It was unnecessary

unnecessary to prove the actual payment of the sum in the bond, but whether the obligation was made—A tender of payment was good payment for that purpose—For the act must be nugatory if the actual payment must be proved; when that tender was proved, bribery was proved to a demonstration. Now by Mr. Mathew's executing the bond, which was the foundation of all the meetings, and without which, Mr. Prittie's tenants would have been left to themselves, and by which Mr. Mathew got half of ninety-five electors, which would have been for Mr. Toler, were there a freedom of election—The election ought to be free and uncontrouled—Mr. Prittie's tenants were not so, and Mr. Mathew was a gainer thereby; even Mr. Toler's half of his own tenantry was not free—It was to be considered, that ninety freeholders were forced to go contrary to their inclinations; therefore the election was not free. Mr. Oliver's answer to the questions of the committee, and belief to those questions, was good evidence. It must be impracticable to lay positive evidence concerning that black transaction, before the committee, that there was an agreement entered into there could be no doubt; nor that it was an injury to the petitioner—Mr. Mathew ought to have produced the bond, and then it would probably appear by the bare indorsement, for what purpose it was executed—The petition does not mention protracting, but it mentions extraordinary delays on one hand, and extraordinary celerity on the other; now retarding, and

now accelerating the poll, and the misconduct of the sheriff—But, independent of the bond, other matters were proved—First, six guineas paid to Ledger by Tim. O'Brien, and by Mr. Mathew himself, on account of defraying his, and other freeholders expences, in some journey ; this had not been accounted for by Mr. Kelly—There was no exception, no proviso in the act of the 15 and 16 Geo. 3. to authorize such a matter ; if there were, every sum, however gross, that would be given, would be given for coach hire, or travelling expences ; was Mr. Lidwell's behaviour accounted for?—He was a warm friend to Mr. Mathew ; he opened a house for his freeholders, with an inscription, for their entertainment—Every attempt to bribe, is bribery in the eye of the law, and it was so stated from authority, and was admitted, even by Mr. Kelly, for he admitted, if it were prosecuted in a court of law, it would be there punished—The defence set up, was very extraordinary ; the use for which it was originally intended was illegal ; for it was given for another election, would not be punishable ; the justification set up is, that it was for a former election—An act which is criminal in itself, is avowed as the defence of this wrong-doing—As to the sheriff, he had left every thing undone which he ought to have done, during the whole election—He had not taken the oath prescribed by law, as appears by his own books, nor had he made any regular entries of the persons taken the oaths, though many took them, as appeared by the clerk's

clerk's books—There were prosecutions intended upon that account, but for want of the evidence of the sheriff's book, the persons thus perjuring themselves, must escape punishment—The excuse for this conduct of the sheriff is very trivial—while all the circumstances linked together, shewed a gross partiality, he could not positively, entirely, and palpably assist Mr. Mathew; but his actions manifest his partiality—Look at one instance: there was one brought up by Baker, and turned down, and not suffered to poll; but when it was called out that he meant to poll for Mr. Mathew, the sheriff acted otherwise—The same zeal was not exerted mutually and equally for both candidates. The errors of the sheriff ought, at least, to have been consistent—The judgment of the committee, ought to be from the facts—Mr. Smith said, that it was the sense of the people, that Mr. Mathew would, at the end, have a majority; but the closing the poll was in his favour, and to Mr. Toler's prejudice. The evidence of Dudley was very strong; and why was not Mr. Lidwell produced, *he* ought to have been by the sitting member, and not *Mile Burke*. The sheriff was not to be excused from his ignorance. The office was not forced upon him, but rather interest was made for his appointment. His partiality was multiform and repeated—Mr. Kelly said, it was a crime to whisper the voter, and that the judge was right in refusing him; but the actions of a third person, were not to deprive a man of his vote—The law is, that freeholders ought

Eng. stat. to come free and uninfluenced; and it is so settled by the declaration of rights—One-half of
 1 Wm. and Mary, ninety voters came influenced. The material evidence against Mr. Mathew were the bond—Mr.
 stat. 2. Lidwell's conduct, the six guineas, and that Mr. Prittie's voters did not act agreeable to their inclinations. This case might be likened to cases in the courts of law, for new trials; and the question was, whether there ought not to be a new election, where something vitious appeared in the former. In the last election, injustice appeared to have been done, as some of the freeholders were prevented from polling, by the sheriff's adjournments—It was said, there were not many prevented; but it was admitted, that some were prevented of their right—That elections ought to be free at common law, appeared from 2d. Inst. 169.—*Fiant electiones rite et libere sine interruptione aliqua*,—and was granted by the statute of Westminster, 1st. Cap. 5. before the declaration of rights. Mr. Mathew had recognized the agreement with Mr. Prittie, and it had been admitted by his friends—Stat. 19 Geo. 2. ch. 11. directed the manner of holding the poll; and the sheriff had not complied with that statute, by beginning his poll at one, and rising at four, and in every other respect had disobeyed the law.—The sheriff had acted contrary to law, by his unequal adjournments; for he ought to have consulted with all the candidates, so to adjourn as to make it agreeable to all parties. The Fethard election had been made another excuse, but that election
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on ended on the third day of the poll for Tipperary: there certainly appeared to him criminality, in the engagement made by gentlemen of very high rank. But in a case of this sort, rank, dignity, and station, ought to have no weight upon the decision.

And the honourable Barry Barry was ordered to report to the House of Commons, from the committee, and did report, that they had determined,

“ That Francis Mathew, Esq; was duly elected and returned a knight of the shire to serve in the (then) present parliament, for the county of Tipperary.”

And this determination was ordered to be entered on the journals.*

In Commons Journals, vol. 18. pa. 277.

* This committee sat from Saturday the 8th, to Wednesday the 26th of November, 1777.